

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
BRIEF**





74-2639

3

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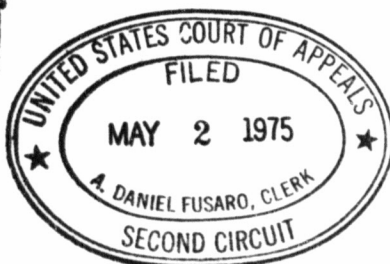
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September 9, 1974

10AM

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7

AMERICAN  
DIRECT

1 rmrf am

54

2 United States of America

3 vs

4 Philip Stoller and Martin Frank

5

6

New York, New York  
September 9, 1974-10:00a.m

7

(Trial resumed.)

8

(In open court, jury present.)

9

THE COURT: Well, we have lost a little time,

10

Mr. Sorkin. Are you ready?

11

MR. SORKIN: I am, your Honor.

12

THE COURT: Proceed.

13

MR. SORKIN: Your Honor, the Government calls as

14

its first witness Ruth Appleton.

15

R U T H D. A P P L E T O N, called as a

16

witness by the Government, being first duly sworn,

17

testified as follows:

18

MR. SORKIN: May I proceed, your Honor?

19

THE COURT: Please do.

20

DIRECT EXAMINATION

21

BY MR. SORKIN:

22

Q Mrs. Appleton, please keep your voice up so all

23

the jurors, counsel and the Judge can hear you.

24

Are you employed?

25

A Yes.

2 Q In what capacity?

3 A I am an attorney with the Securities and Exchange  
4 Commission.

5 Q Where are you an attorney with the Securities and  
6 Exchange Commission?

7 A In Washington, D.C.

8 Q How long have you been employed by them as an  
9 attorney?

10 A Since 1945.

11 Q What is your present position at the Securities  
12 and Exchange Commission at this time?

13 A I am chief of the branch of Small Issues of the  
14 main office of the Securities and Exchange Commission.

15 Q How long have you been chief of the branch of  
16 Small Issues?

17 A Since September 1972.

18 Q Is the branch of Small Issues often called the  
19 Regulation A Section or Reg. A Section?

20 A Yes.

21 Q Could you please tell us what your duties are as  
22 chief of the Reg. A Section in Washington?

23 MR. GOULD: If your Honor please, may I suggest  
24 a side bar conference so that we can probably avoid some  
25 objections that will take time?

1  
2 Let me put it this way, if counsel will indicate  
3 what he proposes to elicit from the witness I will know  
4 whether I have to --

5 THE COURT: I was going to suggest rather than  
6 have a side bar, why don't you whisper to Mr. Gould and I  
7 surmise we might save a lot of time and talking. Would  
8 you please do that?

9 MR. SORKIN: Yes, your Honor.

10 (Counsel confer off the record.)

11 MR. GOULD: If your Honor please, Mr. Sorkin  
12 indicated what he proposes to elicit from the witnesses and  
13 in the circumstances I see no reason for an inquiry on  
14 the voir dire.

15 THE COURT: I am sorry, I didn't follow that.

16 MR. GOULD: In view of what he tells me, I will  
17 have no questions on the voir dire on the witness'  
18 qualifications.

19 MR. FELDSHUH: Same, your Honor.

20 BY MR. SORKIN:

21 Q Mrs. Appleton, would you please tell us what a  
22 Regulation A is?

23 A Regulation A is a method by which a company,  
24 usually a small company, can raise capital for its business  
25 in a manner that is less expensive, less difficult and more

convenient than filing a full registration statement for a large offering. It is only available if the amount of securities to be sold would not exceed \$500,000.

Q Back in 1968, what was the maximum number of dollars that a Reg. A qualified for?

A \$300,000..

Q If a company wanted to sell in excess of \$300,000, what would they have to do, if anything?

A File a full registration statement with the main office of the Commission.

Q Where do companies file their Reg. As?

A They file in the regional offices located throughout the United States and if a company is located within the region of a particular regional office, if their principal place of business is in that region, then they file in a regional office.

Q Does New York have a regional office?

A Yes.

Q Did it have such a regional office in 1968?

A Yes.

Q Does the Securities and Exchange Commission, or the SEC, as it is called, regulate the offer or sale of securities by corporations to the public?

A Yes, in the sense that it requires full and

1 fair disclosure of the offering before it can be made to  
2 the public.

3  
4 Q Are you familiar with the underwriting process?

5 A Yes.

6 Q Could you tell us what an underwriter is and what  
7 his functions are?

8 MR. GOULD: I object to that.

9 THE COURT: It seems to me that we are getting into  
10 the function of the lawyers and the Judge here. I don't  
11 think we have to go into underwriting. If it becomes im-  
12 portant, I will instruct the jury.

13 MR. SORKIN: I am not asking her interpretation  
14 of the law, your Honor, I am asking her as an expert in her  
15 administrative capacity what they require an underwriter  
16 to do when a Reg. A is filed in the appropriate regional  
17 office.

18 MR. GOULD: She can answer that, if that is what  
19 he is asking, but that is not what he asked.

20 MR. SORKIN: I will rephrase the question, your  
21 Honor.

22 Q I believe I asked you what an underwriter is,  
23 what the function of the underwriter is --

24 THE COURT: We don't want to repeat a question  
25 which even you agree is improper.



2 Ask another question.

3 Q Could you tell us, please, what an underwriter --  
4 I will withdraw the question.

5 When a Regulation A is filed, Mrs. Appleton, does  
6 an underwriter -- is an underwriter listed on what is called  
7 an offering circular?

8 MR. GOULD: I object to that, your Honor.

9 MR. SORKIN: I am not sure I understand the  
10 objection, your Honor.

11 THE COURT: I understand it. Let me explain  
12 it again.

13 I don't think it is useful from your point of view,  
14 let alone anyone else's, to ask questions which are really  
15 matters of law. That is number one.

16 Number two, if you want to ask what the procedures  
17 are in processing a Reg. A offering, fine, but you don't  
18 ask it.

19 Now, let's get down to the real nitty gritty,ies,  
20 Mr. Sorkin.

21 Q What procedure is followed when a Reg. A is  
22 filed in the appropriate regional office?

23 A Well, the procedure is that first the filing is  
24 given a number so it can be identified and then the staff  
25 reviews it from the standpoint of whether the Regulation A

2 exemption which is known as a regulation exemption because  
3 it is exempt from the registration requirements, is available,  
4 because it is not available to everyone, and they examine  
5 it from the standpoint of whether there has been adequate  
6 compliance with the terms and conditions of the regulation  
7 and whether there is full and fair disclosure of all material  
8 information necessary for an investor to make an informed  
9 judgment whether or not he wants to buy the securities.

10 Q What documents have to be filed, if any, with the  
11 Reg. A offering?

12 A The documents that are filed consist of a  
13 notification which is on Form 1-A, the exhibits that are  
14 called for by the notification, and a pamphlet which is  
15 called an offering circular.

16 Q Are these documents filed in the appropriate  
17 regional office?

18 A Yes.

19 Q Does the staff of the Commission, Mrs. Appleton,  
20 check the facts contained in the offering circular?

21 A No.

22 Q What, if anything, is done with the offering  
23 circular to determine whether the Reg. A offering has been  
24 complied with?

25 A Well, it is reviewed by the staff for the

2 purposes that I just enumerated, whether the exemption is  
3 available, whether there is adequate compliance and whether  
4 the staff is satisfied with the disclosure of material  
5 information that is in the filing.

6 Q Does the staff have any procedure for going  
7 beyond what is contained in the offering circular and checking  
8 that disclosed by the company filed the Reg. A?

9 MR. GOULD: I object to that, your Honor.

10 THE COURT: Also I think the question really has  
11 been already asked and answered. Let's move on to something  
12 else.

13 Q Could you tell us, please, was the purpose of review-  
14 ing the offering circular --

15 MR. GOULD: I object to that.

16 THE COURT: Yes. I am going to sustain that as  
17 to form.

18 Q Does the offering circular have to contain the  
19 terms of the offering?

20 A Yes.

21 Q Could you tell the Judge and jury what is meant  
22 by the terms of the offer?

23 A Well, this would include the type of securities  
24 that are being offered, the amount of securities being  
25 offered, the price at which the securities are being offered,  
the underwriting commissions or discounts or compensation

1 to be paid to the underwriter, the expense money that will  
2 be paid to the underwriter, the plan of distribution, how  
3 the stock will be distributed and the manner in which the  
4 offering will be made, that is, whether it is on a best  
5 efforts basis, and that means exactly what it says, the  
6 underwriter will use its best efforts in selling securities,  
7 or it may be what we call a minimum-maximum type of deal,  
8 where if a minimum amount of shares are not sold within  
9 a specified period of time then the investor will get his  
10 money back.  
11

12 If the minimum is sold within the specified period  
13 of time, then the company will get the proceeds and the  
14 investor will get his shares of stock and any other conditions  
15 that are necessary.

16 Q Does the Commission require that the name of the  
17 underwriter be disclosed in the offering circular?

18 A Yes.

19 MR. GOULD: I object to that. What does this  
20 have to do with our case?

21 THE COURT: I must say --

22 MR. SORKIN: I will be happy to tell your Honor  
23 at the side bar what this has to do with the case. I am  
24 trying to elicit certain terms so that the jury may better  
25 understand the evidence as it comes in.

2 THE COURT: So you say, and I am sure you mean it,  
3 but the problem is with the form of your question. You  
4 rephrase that. I understand what you are trying to get at,  
5 but you are not doing it very precisely. I will let you  
6 lead, if you have to --

7 Q Does the offering circular contain the name of  
8 the underwriter --

9 MR. GOULD: That is the same question --

10 Q Is it required by the Commission that the offering  
11 circular contain the name of the underwriter?

12 MR. GOULD: I object. That is immaterial and  
13 irrelevant. There is no charge here that the name of an  
14 underwriter was withheld.

15 MR. FELDSHUH: Or that there was an underwriter  
16 in this case.

17 THE COURT: Well, I don't know that there was  
18 either --

19 MR. GOULD: We will concede there was no underwriter.

20 MR. SORKIN: There was an underwriter, your  
21 Honor: it was a self-underwriting.

22 MR. GOULD: If we are going to have these objections  
23 turned into occasions for that kind of remark, we are going  
24 to have to pester everybody with side bar conferences.

25 THE COURT: May I suggest if this is what you are

2 trying to get out, there must be a document. Why don't  
3 we get this and then treat it, if there is any ambiguity --

4 MR. SORKIN: The next witness will be the very  
5 person who reviewed the file. My purpose in bring Mrs.  
6 Appleton is to explain the terms of a Reg. A. If your  
7 Honor wants me to call the next witness, I will do that.

8 THE COURT: I think it might be helpful, because  
9 this general term, which is admissible under certain circum-  
10 stances, is fine, but if we are going to have a document  
11 put in evidence by a member of the Commission, I don't  
12 know why we don't wait for that witness and that time,  
13 instead of going around Dick's barn to do it. I am sure  
14 Mrs. Appleton has many other things she would like to be  
15 doing rather than wasting her time for this.

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2 Q Mrs. Appleton, you have indicated earlier that  
3 the offering circulars are failed in the regional office.

4 Is the document filed, the final offering circular,  
5 or a proposed offering circular?

6 A It is usually a proposed offering circular. There  
7 had been instances when a final offering circular has been  
8 filed originally, but this is very rare.

9 Q Does there come a time when the company is  
10 informed that they have a right to being selling their stock  
11 to the public?

12 A Yes.

13 Q Does that have a term or phrase?

14 A Well, some regional offices call that the clear-  
15 -ence date, some regional offices call it the effective date,  
16 but regardless of what you call it, it is the date that the  
17 company is advised that they can proceed with the offering  
18 the sale of the securities.

19 Q Mrs. Appleton, if during the course of the filing  
20 a change is made either in the name of the underwriter or in  
21 the terms of the offering, what, if anything, has to be  
22 done by the company?

23 MR. GOULD: I object to this, your Honor;  
24 nothing to do with this case.

25 MR. SORKIN: Your Honor, it does. If you give

me the opportunity at side bar, I will explain it.

THE COURT: I don't want any side bar explanations unless they are absolutely required, as I am sure you know, and, second of all, even from what I know, this seems almost futile from your point of view.

Again, there must be some specific which would be far more explanatory to any group of us, whether we are educated in this field or not. These generalities are not helping us.

Q Mrs. Appleton, have you ever heard of an effective letter?

MR. GOULD: A what?

MR. SORKIN: Effective letter.

A Yes.

MR. GOULD: I object to this, your Honor, on the same grounds.

THE COURT: Mr. Sorkin, again if there is specific documentation, and I am sure there is, I would think it better practice so that we could all understand it, and also be fair to the defense counsel so that their clients will be enlightened, we deal with the documents. If there is anything that has to be explained, we can explain it knowing what we are dealing with.

MR. SORKIN: Then I will withdraw the question.



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gab-3

Rich-direct

I have no further questions of Mrs. Appleton.

MR. GOULD: No questions.

THE COURT: Thank you, Mrs. Appleton.

MR. FELDSHUH: No questions.

THE COURT: Thank you, Mrs. Appleton.

(Witness excused.)

MR. SORKIN: The Government calls Bruce Rich,  
your Honor.

B R U C E A. R I C H, called as a witness by the  
Government, having been first duly sworn, was examined  
and testified as follows:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes.

MR. GOULD: If your Honor please, may we have the  
same procedure that Mr. Sorkin tells us what he proposes  
to elicit?

MR. SORKIN: Will I be required to do this with  
every one of the Government witnesses?

THE COURT: It is not a matter of requirement in  
the sense that it is for that purpose and none other, Mr.  
Sorkin. It might save some time and effort for you.

MR. SORKIN: I will be happy to tell Mr. Feldshuh  
and Mr. Gould, your Honor.

THE COURT: Good.

1 gab-4

Rich-direct

2 (Pause.)

3 MR. GOULD: If your Honor please, I will have  
4 to reserve for myself voir dire, until the appropriate question  
5 is asked, which is opinion evidence rather than factual  
6 evidence.

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MR. SORKIN:

10 Q Are you an attorney, Mr. Rich?

11 A Yes, I am.

12 Q How long have you been a member of the bar?

13 A Since 1965.

14 Q Are you in private practice now?

15 A Yes, I am.

16 Q Was there a time when you were employed by the  
17 Securities and Exchange Commission?

18 A Yes.

19 Q When was that, sir?

20 A From September 1965 through June 1969.

21 Q Could you tell us, please, what your duties were  
22 at the Commission during that period of time?

23 A Initially I was with the enforcement section in  
24 the New York Regional Office, and in June of 1968 I went  
25 into the Regulation A Section, the New York regional office.

1 gab-5

Rich-direct

2 Q Were you in the Reg. A section, the Regulation A  
3 section in 1968 and 1969?

4 A From June 1968 through June 1969.

5 Q What was your position?

6 A Some time in the summer of 1968 I became the chief  
7 of the Reg. A section, New York office.

8 Q Mr. Rich, could you tell us briefly what your  
9 function was as head of the Reg. A section in the New York  
10 office?

11 A To supervise all filings made in the New York  
12 office under Regulation A.

13 Q Are you familiar with the name of a company called  
14 Training With The Pros, Inc.?

15 A Yes.

16 Q Were you head of the Reg. A section when that  
17 particular company filed a Reg. A in the New York regional  
18 office?

19 A Yes, I was.

20 Q Let me show you what has previously been marked  
21 as Government Exhibit 1A for identification, Mr. Rich.

22 Would you look at that, please, and I will ask you  
23 if you can identify it?

24 A Yes, I can.

25 Q Please keep your voice up. What is 1A marked for

1 gab-6

Rich-direct

2 identification?

3 A 1A is the notification of the Regulation A offer-  
4 ing for Training With The Pros, Inc.

5 Q When was that filed, sir?

6 A It was received by the Commission on October 25,  
7 1968.

8 Q Mr. Rich, what is a notification?

9 A A Regulation A offering is an offering for --  
10 Regulation A is one method by which a company may offer secur-  
11 ities, and when a company plans to have a Regulation A  
12 offering, they file with the Commission a notification and  
13 with the notification are several exhibits.

14 A notification is primarily in question, answer  
15 form which asks questions about the company and the securities  
16 that are being offered.

17 Q Mr. Rich, let me show you now what has previously  
18 been marked as Government Exhibit 1B for identification.  
19 And I will ask you if you can identify this?

20 MR. SORKIN: Your Honor, I am going to move  
21 all these documents be admitted in at once to save time.

22 A This is an amended notification.

23 Q For which company?

24 A For Training With The Pros.

25 Q When was that filed with the Commission, Mr. Rich?

gab-7

Rich-direct

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A On January 24, 1969.

3

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Q Could you tell us, please, the reason why, if any, amendments are filed with the notifications?

5

MR. GOULD: I object to that.

6

7

8

THE COURT: I would sustain that, too. I assume that he really isn't the witness who could give that information.

9

MR. SORKIN: I will rephrase the question.

10

Q Are amendments filed to notifications, Mr. Rich?

11

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14

15

A Yes. When a notification is received, it is reviewed by the Regulation A staff and if comments are necessary, the staff sends out a comment letter and a reply to the comment letter. The issuer will file an amended notification.

16

17

Q Let me show you now what has been marked as Government Exhibit --

18

19

THE COURT: What is the exhibit number, Mr. Rich?

THE WITNESS: 1B.

20

21

22

Q Let me show you what has previously been marked as Government Exhibit 1C, Mr. Rich. I ask you to identify this, if you can.

23

A 1C is a copy of the amendment to the notification.

24

Q Copy of 1B.

25

A Yes, it is. It is a red line copy. The

1 gab-8

Rich-direct

2 procedure of the staff at the time in 1968, 1969 --

3 Q Keep your voice up.

4 A When you sent out a comment letter, you asked  
5 that not only the issuer file the four required copies of the  
6 amendment, but they submit a red line five copy which would  
7 make it easier for the staff to review in comparing the  
8 amended notification and exhibits to the comment letter.

9 Q Are there red lines on that one document 1C?

10 A Yes, there are.

11 Q Do they reflect the changes, to the best of your  
12 recollection?

13 A To the best of my recollection, yes, they do.

14 Q When was that filed, Mr. Rich?

15 A The amendment was filed on January 24, 1969.

16 MR. SORKIN: Your Honor, at this time we move to  
17 have Government Exhibits 1A, 1B and 1C submitted into evi-  
18 dence.

19 (Pause.)

20 MR. GOULD: I object to these as irrelevant and  
21 immaterial to any of the issues in this case. There is  
22 no charge these have anything to do with this underwriting.

23 THE COURT: You gentlemen have seen these, I  
24 have not. May I see them?

25 MR. GOULD: Of course.

1 gab-9

Rich-direct

2 THE COURT: At the moment, Mr. Sorkin, I would  
3 hve to agree with the defendants.

4 MR. SORKIN: May I explain, your Honor?

5 THE COURT: No, there is no need to explain,  
6 Mr. Sorkin. The point is very simple. There is nothing  
7 so far and there is no prejudice to you in this observation.

8 At this stage there is nothing to show that either  
9 of the defendants had anything to do with these documents.  
10 I will reserve unto you the right to offer these later when  
11 there is some basis to do so.

12 MR. SORKIN: That is what I was asking.

13 THE COURT: As far as their competence, meaning  
14 by that whether or not they are records received and so on,  
15 I don't think there is the slightest issue, and I will be  
16 astonished if these defense lawyers said otherwise.

17 I will ask them.

18 MR. GOULD: I assume they are honest copies.

19 THE COURT: You don't question that these documents  
20 were ones in being and were filed?

21 MR. GOULD: No, not at all. They have nothing  
22 to do with my case.

23 MR. SORKIN: I am asking subject to connection  
24 that they be admitted, your Honor.

25 THE COURT: We could do it that way. I think my



1 gab-10

Rich-direct

2 way is the same and it is really a matter of semantics.

3 I am not going to receive them at this point  
4 without prejudice to you to renew your offer later.

5 Q Let me show you now what has previously been  
6 marked as Government Exhibit 1 for identification. Would  
7 you look at that, please. I ask you if you can identify  
8 that?

9 A Yes, I can.

10 Q What is it?

11 A This is the definitive offering circular to the  
12 Training With The Pros Regulation A offering.

13 End t A.M.

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1  
2 Q What do you mean by the definitive offering circular?  
3

4 A Under Regulation A, until the staff has no further  
5 comments, an offering can't commence. An offering circular  
6 is an exhibit, one of the exhibits of the notification  
7 and when the staff has no further comments, it informs  
8 the issuer that it can commence the offering and the  
9 offering is then made pursuant to what we call the definitive  
10 offering circular.

11 MR. GOULD: I move to strike it all out. It is  
12 irrelevant to any of the issues here. It wasn't really  
13 responsive to the question. I thought your Honor had ruled  
14 with respect to this issue.

15 THE COURT: No, no, I don't know what you are  
16 talking about. I didn't rule with respect to what he just  
17 said because I didn't know what he said until I heard it.

18 MR. GOULD: On the area of materiality, your  
19 Honor has ruled.

20 THE COURT: I am going to take this and it is all  
21 subject to connection, there can be no doubt of that.  
22 So your objection is overruled.

23 MR. SORKIN: Your Honor, at this time we will  
24 move to have it in and we abide by your Honor's ruling --

25 THE COURT: I don't understand what you are

1 saying.

2  
3 MR. SORKIN: We reserve the right to move No. 1  
4 into evidence, your Honor.

5 THE COURT: Of course.

6 Q Were you in charge of overseeing the filing of  
7 the Reg. A offering of Training With The Pros?

8 A Yes, I was.

9 Q At the time of the public offering, Mr. Rich, were  
10 you ever notified that a Ramon D'Onofrio, Philip Stoller  
11 and Jerome Allen were subscribers to the issue of Training  
12 With The Pros?

13 MR. GOULD: I object to this, your Honor.

14 THE COURT: When you say notified, do you mean did  
15 he receive any documentation to this effect?

16 MR. SORKIN: That is exactly what those records are,  
17 your Honor --

18 THE COURT: I am going to really have to clamp  
19 down on you, Mr. Sorkin. I don't want a speech. Do you  
20 mean whether or not he received any written notification?

21 MR. SORKIN: Yes, your Honor.

22 THE COURT: Then ask it that way.

23 Q Mr. Rich, did you receive any written notification  
24 that either Philip Stoller, Ramon D'Onofrio or Jerome Allen  
25 were subscribers to the original offering of Training With

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Rich-direct

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The Pros?

MR. GOULD: I object to the form. If he wants to ask whether he got any written notification, he has to ask him that first and then let's see what written notification he got and then they speak for themselves.

THE COURT: I will allow it.

MR. FELDSHUH: I make the objection, your Honor, that it is not binding upon the Defendant Frank.

THE COURT: Go ahead.

Q Would you please answer the question?

A No.

Q Did there come a time, Mr. Rich when under your supervision an investigation was commenced by the SEC into the offering of Training With The Pros and the after market?

A Yes.

Q Do you know what initiated that inquiry?

MR. GOULD: I object to this, your Honor.

THE COURT: Yes, I don't see the point of that at all.

MR. SORKIN: I will withdraw the question, your Honor. I have no further questions.

RICH  
CROSS

## 2 CROSS EXAMINATION

3 BY MR. GOULD:

4 Q How long were you chief of the Reg. A Section,  
5 Mr. Rich?

6 A Almost one year.

7 Q From when to when?

8 A I went into Regulation A in about June of '68  
9 and left the Commission in June of '69.

10 Q Did you inquire when the Training With The Pros  
11 offering circular was filed and the other material -- did  
12 you inquire as to who the subscribers were?

13 A The procedure we had at that time -- there are  
14 two different ways that we made an inquiry. One is to see  
15 how the shares of the issue were to be offered, and that  
16 would be disclosed in the notification and in the offering  
17 circular.

18 Q And that is the obligation of the issuer, isn't  
19 it, to provide that information?

20 A Correct. The other --

21 Q Wait, wait --

22 MR. SORKIN: I ask that he be allowed to finish  
23 the answer, your Honor.

24 MR. GOULD: I just asked for a yes or no answer.

25 THE COURT: Let's start over again.

Q Is it not the obligation of the issuer to provide

2 you with the names of the subscribers?

3 A If there is no underwriter, yes.

4 Q Right. Well, in this case there was no underwriter,  
5 isn't that correct?

6 A Correct.

7 Q We are clear on it, there was no underwriter, the  
8 issuer did it itself?

9 A The offering circular did state that the issuer  
10 was to make the offering.

11 Q So if there was any obligation to provide the  
12 names of subscribers, that obligation was on the issuer,  
13 as far as you were concerned administratively?

14 A The staff was not -- the staff was aware that  
15 this was a company or an issuer offering, and I believe  
16 that the offering circular notification did state if any  
17 underwriters were to be used, they would amend the notifica-  
18 tion offering circular.

19 Q Do you understand me, hear me pretty good?

20 A Yes.

21 Q In the case of a company which files its own offering  
22 circular, where there is no underwriter, the obligation,  
23 as far as the Securities and Exchange Commission is concerned,  
24 to provide the names of subscribers is the obligation of  
25 the issuer? Yes or no.

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rmrf 6

Rich-cross

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A Yes.

Q And in this case the issuer means the company called Training With The Pros, correct?

A Correct.

Q And in this case the only person connected with Training With the Pros that you dealt with was a Mr. Moss?

A Yes.

Q He was what, the president of the company?

A I believe that is right.

Q He didn't have a lawyer, did he?

A Yes, there was a lawyer for the offering.

Q Who was the lawyer, was it Mr. Frank?

A No.

Q Who was the lawyer?

A According to the offering circular, the original lawyer was a man named Mr. Pfingst and then it became --

Q Pfingst, would you spell that, please?

MR. SORKIN: Your Honor, we have the offering circular --

MR. GOULD: Please, Mr. Sorkin. I know you have that.

MR. SORKIN: That is right in the offering circular, your Honor, and Mr. Gould can see it.

THE COURT: Fine, if he would like to look at it.



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Rich-cross

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Q Pfingst?

3

A Yes.

4

Q F-i-n-i-x.

5

A If I could see the offering circular --

6

MR. SORKIN: Your Honor, objection.

7

A I believe it was F-p-i --

8

THE COURT: Both of you gentlemen are supposedly members of the Bar of this court and I won't take any more of these flareups, particularly in a silly business like this. Why don't you hand Mr. Gould the document and then if the witness wishes to see it, he may, and if you won't give it to him, I will.

14

Q So there was a lawyer?

15

A Two lawyers.

16

Q Who was the other lawyer?

17

A A Mr. Barton.

18

Q Here is the offering circular, Exhibit 1 for identification, and would you just refresh your recollection.

20

There was an offerer or issuer called Training With The Pros, right?

22

A Correct.

23

Q And there was a man named Moss who was the president of it, right?

25

A Yes.

2 Q And there were two lawyers, Mr. Pfingst -- isn't  
3 that the name?

4 A Initially it was a Mr. Pfingst, I believe  
5 P-f-i-n-g-s-t, and then it became a Mr. Barton.

6 Q There were two successive lawyers?

7 A Yes.

8 Q Then there was an accountant, wasn't there?

9 A Yes.

10 Q Those were the only people you dealt with?

11 A On the Regulation A offering, yes.

12 Q You never dealt with Mr. Frank, correct?

13 A Correct.

14 Q You never dealt with Mr. Stoller?

15 A Correct.

16 Q Never dealt with a Mr. Allen?

17 A Correct.

18 Q These are the people you dealt with?

19 A On the processing of the offering, yes.

20 Q And whatever requests you made for information  
21 you made to those people?

22 A That is correct.

23 Q And they provided the information?

24 A Correct.

25 Q Did you have a meeting with Mr. Moss and anybody

2 else called a due diligence meeting on this thing?

3 A I believe there was a meeting with Mr. Moss. I  
4 did not have it.

5 Q Who had it?

6 A Mr. Goldberg, who was under my supervision in  
7 the Regulation A section.

8 Q You told Mr. Goldberg what he should do at this  
9 due diligence meeting?

10 A Yes.

11 Q Did you tell him what questions to ask?

12 A He handled many due diligence meetings during the  
13 year and he was very familiar with what had to be asked.

14 Q You didn't have to tell him what to do?

15 A At this point in time, no.

16 Q We have it, then, that the Regulation A offering  
17 circular was filed with you and then you have nothing more  
18 to do with the matter until sometime later, is that correct?

19 A I don't understand your question, Mr. Gould.

20 Q Between the time of the filing of the offering  
21 circular and the end of your tenure as head of the Reg. A  
22 Section over in the SEC, did you have anything more to do  
23 with this offering?

24 A I supervised the processing, reviewed the  
25 amendments, all letters that went out were my letters,

everything Mr. Goldberg did was under my supervision,  
everything the accountant did was under my supervision.

Q You had working on it yourself, Mr. Goldberg,  
accountants?

A Yes.

Q Lawyers?

A Mr. Goldberg and I were the lawyers.

Q All right, that is all.

THE COURT: Do you have anything, Mr. Feldshuh?

CROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. Rich, is that your name, sir?

A Yes.

Q Did Mr. Frank have anything to do with this offer-  
ing circular within the time period you were referring to  
in your direct testimony?

MR. SORKIN: Objection, your Honor.

THE COURT: Yes, I am going to sustain that.

Q What if anything during the period of time that  
you were working on this offering circular did Mr. Frank have  
anything to do with it?

MR. SORKIN: Objection, your Honor.

THE COURT: Well, if you want to ask whether or  
not he had any dealings with Martin Frank in connection

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rmrf 11

Rich-cross

85

with this Reg. A offering, I will allow it.

Q You heard his Honor's question?

A Yes.

Q Will you answer it, please?

A I had no contact with Mr. Frank in connection with the processing of this offering circular.

Q At this time do you know of any connection of Mr. Martin Frank with Mr. Joseph Pfingst or Mr. Barton?

MR. SORKIN: Objection, your Honor.

THE COURT: At the time of what?

MR. FELDSHUH: At the time he was working on the offering circular.

THE COURT: Yes, go on. Your question doesn't come to me.

MR. FELDSHUH: I'm sorry, sir?

THE COURT: Your question doesn't come to me. I must have misheard it. Put it again.

At the time he was working on the Reg. A offering -- go on.

Q Did you know of any relationship between Mr. Martin Frank and Mr. Joseph Pfingst and Mr. Barton, who were the attorneys on the offering circular?

MR. SORKIN: Objection, your Honor.

THE COURT: I am going to sustain that.

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rmrf 12

Rich-cross

86

Let me put it this way, Mr. Feldshuh, I will certainly allow one more question in this area, whether or not he had any knowledge that Frank had anything to do with this at all. If you want to ask him that, fine.

Q Will you answer that question, please?

A I had no knowledge that Mr. Frank had anything to do with this offering circular.

REDIRECT EXAMINATION

BY MR. SORKIN:

Q Mr. Gould asked if Mr. Stoller, Mr. Frank or Mr. Allen had anything to do with this offering circular.

What about a gentleman by the name of D'Onofrio, did you deal with him?

MR. GOULD: I object to that.

THE COURT: I will allow that.

Q What about a gentleman by the name of Ramon D'Onofrio?

A I had no contact with a Mr. D'Onofrio in connection with this offering circular.

MR. SORKIN: That is all.

(Witness excused.)

MR. SORKIN: Your Honor, the Government calls Robert Devine.

2 R O B E R T D E V I N E, called as a witness  
3 by the Government, being first duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SORKIN:

7 Q Mr. Devine, are you employed?

8 A Yes.

9 Q In what capacity?

10 A As a section manager for the Irving Trust Company.

11 Q How long have you been employed by them?

12 A Six years.

13 Q Have you ever heard of a company called Training  
14 With The Pros?

15 A Yes.

16 Q Was the Irving Trust Company the transfer agent  
17 for Training With the Pros?

18 A Yes.

19 Q During what period of time, sir, do you recall?

20 A About '69, '70, '68, in that area.

21 Q Let me show you now what has previously been  
22 marked as Government's Exhibit 2-A through 2-P.

23 Would you look at these documents and tell us,  
24 please, if you can identify them?

25 A Stock certificates.

2 Q Go ahead. Of what company?

3 A Training With the Pros, Inc.

4 Q Who were they issued by?

5 A Issued by Irving Trust Company.

6 Q Are they original certificates?

7 A Yes.

8 Q When were they issued?

9 A February 21, 1969.

10 MR. SORKIN: Your Honor, at this time we move 2-A  
11 through 2-P in evidence, and I show them to counsel.

12 (Pause.)

13 MR. GOULD: If your Honor please, rather than  
14 waste time with a lengthy objection, why not take them  
15 subject to connection with the issues in the case so that  
16 this gentleman doesn't have to come back? I concede  
17 that they are valid documents, in other words, there is no  
18 question that they are good certificates, all the signatures  
19 are probably presumptively genuine and the powers in the  
20 back are presumptively genuine, and why don't we let the  
21 gentleman go and give them a number and see whether they  
22 belong in the case at some appropriate time?

23 THE COURT: Fine. The certificates we know as  
24 the A through 2-P will be received subject to connection  
25 as to the defendant.



(Government's Exhibits 2-A through 2-P received  
in evidence.)

THE COURT: Is this all you wish to bring out  
through this witness?

MR. SORKIN: No, I will proceed, your Honor.

Q Mr. Devine, have you ever heard the term signature  
guaranteed?

A Yes.

Q Would you tell us what that means?

MR. GOULD: I object to this, your Honor.

THE COURT: I will allow his understanding as a  
banker.

MR. GOULD: He is not a banker, your Honor. Can  
I ask a few questions about his background? I think it  
is a little more complex --

MR. SORKIN: I will withdraw the question and  
qualify him, your Honor.

Q Mr. Devine, what is the purpose of a transfer  
agent?

A To physically transfer the securities from one  
name into another name.

Q What is required, if anything, before the stock  
can be transferred out of one name into another?

A You need transfer instructions and then if the

securities are in an individual name, a signature guarantee is required.

Q Have you personally supervised such transfers?

A Yes.

Q Can you tell us, please, what a signature guarantee means?

MR. GOULD: Means to him?

MR. SORKIN: Means to him, your Honor, yes.

THE COURT: I would allow his understanding.

A That the guarantee of a signature by a member firm or a commercial bank denotes that the signature is of the person who signs it and in whose name the certificate is registered.

Q And if the signature is not guaranteed by a commercial bank or a member firm of the New York Stock Exchange, will you transfer the stock?

A No.

THE COURT: I will allow that.

A They should not transfer the stock.

Q Let me show you what has previously been marked as Government's Exhibit 3 for identification. Would you look at just the certificate on top, not the one underneath, and I ask you if you can identify that. Can you identify that?

A Yes. This is the certificate of Training With The Pros and was issued April 25, 1969.

Q April 25, 1969?

A Yes.

Q In whose name is it now registered?

A It was originally registered in the name of Emanuel Deetjen & Co. and was transferred into the name of Hirsch & Co.

Q On what date, sir?

A June 12, 1969.

MR. SORKIN: Your Honor, we offer 3 into evidence.

MR. GOULD: May we have the same arrangement with that, subject to connection, your Honor?

THE COURT: Yes.

(Government's Exhibit 3 received in evidence.

MR. SORKIN: Your Honor, at this time with these certificates -- I have no further questions for Mr. Devine, and I would like to read the name of the people to whom this stock was issued. I would like to read it to the jury.

THE COURT: You certainly may.

(Mr. Sorkin reads to the jury from Government's Exhibit 3 in evidence.)

2 MR. SORKIN: Your Honor, I have no further  
3 questions of Mr. Devine at this time.

4 MR. GOULD: I have a question.

5 CROSS-EXAMINATION

6 BY MR. GOULD:

7 Q Did I understand you to say, Mr. Devine, that  
8 a transfer agent will only effect a transfer on a signature  
9 guaranteed by a member firm or a commercial bank?

10 A We do recognize all savings banks in the State  
11 of New York.

12 Q How about certain over-the-counter securities  
13 houses?

14 A Sir?

15 Q Didn't you hear me?

16 A No, I did not.

17 Q You know a firm in New York called Troster, Singer?

18 A I have heard of them.

19 Q Ever accepted a guaranteed signature from them?

20 A Yes.

21 Q They are not a member of a New York Stock Exchange,  
22 are they?

23 A I am not sure.

24 Q Don't you look to find out? How about a firm  
25 called Singer & Deane, haven't you accept guarantees from them?

gab-2

Devine-cross

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A I don't know of this, sir.

3

Q You never heard of them?

4

5

A I did not say that. You asked me if we ever  
accepted them.

6

Q You know their name, don't you?

7

A I have heard of them.

8

Q You know the name of Troster, Singer?

9

A Yes.

10

11

Q You know that you have accepted guarantees from  
Troster, Singer?

12

A I believe we have, sir.

13

14

Q You know that they are an over-the-counter house,  
isn't that right?

15

A I don't really know.

16

17

Q Have you not in the past accepted guarantees from  
people who were neither member firms nor commercial banks?

18

A I can't answer that, sir.

19

Q You don't know?

20

A That's right

21

22

Q There is somebody at the Irving Trust Company who  
has the say on whether you accept a guarantee, isn;t there?

23

A Yes.

24

Q That's not you?

25

A No.

gab-3

Devine-cross

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Q That is somebody over you, isn't it?

3

A Somebody in another department.

4

5

6

Q That's right. When a guaranteed signature comes in, you bring it to that gentleman, isn't that right, to that department?

7

A If you feel that it is questionable, yes.

8

9

10

Q If it is anything but a member firm, a commercial bank or an over-the-counter firm that is well-known to you, you refer it to that department, isn't that right?

11

12

A This is something that is done in the transfer department, sir.

13

Q Not by you?

14

A No, sir.

15

Q You have nothing to do with that?

16

A With transfer, no.

17

18

Q So you don't know what is done with respect to the treatment of guaranteed signatures?

19

A I was asked my opinion, sir.

20

Q Your opinion?

21

A Yes.

22

Q You didn't check it with anybody?

23

24

MR. SORKIN: Objection as to -- I don't see the relevance of whether he checked it.

25

MR. GOULD: He asked the question.

gab-4

Devine-cross

MR. SORKIN: Excuse me. He was asked his opinion.

THE COURT: The relevance is very simply stated.  
This is cross-examination. I will allow this.

Q Let's get it clear. When you answered that you  
only effect a transfer on a guaranteed signature by a member  
firm or commercial bank, that was your opinion?

A Yes, sir.

Q Correct?

A Yes, sir.

Q Actually you are not the person who does that in  
your trust department?

A That's right.

Q There are other people who do it?

A Right.

Q And they don't consult with you?

A That's correct.

Q And you don't know what they do up there, what  
their standards are, do you?

A Not fully, no.

MR. GOULD: That is all.

MR. FELDSHUH: No questions, your Honor.

MR. SORKIN: No further questions, your Honor.

THE COURT: Thank you, Mr. Devine, you are excused.  
(Witness excused.)

Diopside  
Direct



1 gab-5

D'Onofrio-direct

2 MR. SORKIN: Your Honor, the Government calls  
3 Ramon D'Onofrio.

4 R A M O N N. D' O N O F R I O, called as a witness  
5 by the Government, having been first duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SORKIN:

9 Q Mr. D'Onofrio, please keep your voice up, sir.  
10 Mr.D'Onofrio, have you ever been conficted of  
11 a crime?

12 MR. GOULD: I object to this, your Honor. Let's  
13 get some testimony.

14 THE COURT: I couldn't even hear the question.

15 MR. SORKIN: The question was, have you ever  
16 been convicted of a crime.

17 THE COURT: I will permit the Government to get  
18 into this on direct if need be, but I think before we get  
19 to that, let's find out what he knows about this case.

20 MR. SORKIN: Very well, your Honor.

21 Q Mr. D'Onofrio, did there come a time when you  
22 opened an account at a bank called Bank Hofmann in Zurich,  
23 Switzerland?

24 MR. GOULD: I object to it as to his form, your  
25 Honor. I think this obviously is a kind of witness where

1 gab-6

D'Onofrio-direct

2 we are going to have to follow the rules.

3 THE COURT: What rule are you talking about?

4 I assume you can ask a man whether or not he opened a bank  
5 account.

6 That is what you want to ask this man?

7 MR. SORKIN: That is correct, your Honor.

8 THE COURT: All right.

9 MR. GOULD: If we are going to get a yes or no,  
10 it is all right.

11 THE COURT: I assume it is very acceptable to have  
12 a yes or no answer.

13 Now let's go ahead.

14 MR. SORKIN: Thank you, your Honor.

15 Q What is the answer, Mr. D'Onofrio?

16 A The answer is yes.

17 THE WITNESS: But, your Honor, may I point out I am  
18 not hearing some of the dialogue from you. I don't know  
19 whether I am permitted to answer or not. I am deaf in my  
20 left ear.

21 THE COURT: The answer is yes, as I understand it.

22 THE WITNESS: Thank you, your Honor. That is why  
23 I turned to you.

24 THE COURT: All right.

25 Q Mr. D'Onofrio, when was that account opened?

1 gab-7

D'Onofrio-direct

2 A In the early part of 1968, I believe.

3 Q Could you tell us, please, Mr. D'Onofrio, the  
4 circumstances surrounding the opening of this account in  
5 Bank Hofmann?

6 A Yes, I can. In the early part of 1968 on  
7 Pine Street in the office of Hancock Securities -- I don't  
8 recall the address -- I was sitting in the office along with  
9 three gentlemen, Mr. Stoller, Mr. Allen and another gentlemen,  
10 Mr. Souran, but he was sort of in the background --

11 Q Before you proceed, Mr. D'Onofrio, do you see Mr.  
12 Stoller in the courtroom?

13 A Yes, I believe he is sitting behind Mr. Frank.

14 MR. SORKIN: Mr. Gould, do you represent he  
15 properly identified Mr. Stoller?

16 MR. GOULD: He says he knows him.

17 MR. SORKIN: Thank you.

18 Q Mr. D'Onofrio, did you have a conversation with Mr.  
19 Stoller and Mr. Allen?

20 A Yes, I did.

21 Q Tell us, please, what you said, what Mr. Stoller  
22 said and Mr. Allen said and to whom.

23 A Yes. Mr. Stoller asked me if I ever thought of  
24 opening a Swiss bank account. I said, "It's not a question  
25 of asking me, Phil."

1 gab-8

D'Onofrio-direct

2 May I refer to him as Phil?

3 Q Just tell us the whole conversation.

4 A I said, "It's not a question of asking me, Phil,  
5 it's a question of I already have a Swiss bank account. I  
6 opened one at least a year or two ago -- I can't recall --  
7 with Swiss Bank Corporation."

8 He said, "What do you do with your account?"

9 I said, "I trade in silver. I get a little better  
10 margin requirements in Zurich on a Swiss Bank Corporation  
11 than I would get in the United States."

12 "Well," he said, "had you ever thought of opening  
13 an account that you could have more flexibility with?"

14 I says, "No, I have not, but I am anxious to learn,  
15 anxious to listen."

16 He says, "How would you like opening an account  
17 at Bank Hofmann in Zurich, Switzerland?"

18 He said, "We could make such arrangements for you."

19 I said, "What would the benefits be, Phil, to me,  
20 if I opened an account as opposed to me having my account  
21 over at Swiss Bank Corporation?"

22 He says, "There are a number of benefits. Number  
23 1," he said, "I am sure you are getting margin calls on  
24 your silver requirements."

25 I said, "Yes, I do. I get them. I meet them."

gab-9

D'Onofrio-direct

1                   He says, "At Bank Hofmann you will get them, but  
2                   you will get them less intermittently. You won't get them  
3                   as regularly because you will be a preferred client."

4                   Q     Could you please tell the Court and jury what  
5                   margin is or what a margin call is, as you used the term, Mr.  
6                   D'Onofrio?  
7

8                   MR. FELDSHUH: I object to it. He has not been  
9                   qualified to tell us anything other than the fact he has a  
10                  bank account.

11                  THE COURT: Again that may be and you can so argue.  
12                  He can tell us what his understanding is or was.

13                  THE WITNESS: I may, your Honor?

14                  THE COURT: Yes.

15                  A     My understanding of a margin call, having been  
16                  a former

17                  MR. GOULD: If your Honor please --

18                  Q     Just tell us what your understanding is, Mr.  
19                  D'Onofrio.

20                  A     My understanding of a margin call is that when a  
21                  person puts up a certain amount of money to buy either  
22                  securities or commodities and during the course of purchasing  
23                  it and holding it, if that security or margin falls or  
24                  drops or declines, the bank or brokerage house that has lent  
25                  you a certain amount of money in the beginning to purchase

1 gab-10

D'Onofrio-direct

2 those securities normally calls you or writes you or informs  
3 you in some manner to come up with additional funds because  
4 they no longer have the balance required.

5 So that if securities, stocks or commodities  
6 fall, you can get margin calls and you have to come up with  
7 money on a regular basis. If it goes up, you do not get margin  
8 calls.

9 Q Mr. D'Onofrio, were you ever in the securities  
10 business?

11 A Yes, I was.

12 Q In what capacity?

13 A I was director of underwriting for a New York  
14 Stock Exchange member firm.

15 Q What was that firm?

16 A A.T.Brod & Company.

17 Q Mr. D'Onofrio, could you tell us, please, the  
18 continuation of that conversation that you had with Mr. Stoller  
19 and Mr. Allen?

20 A Yes. He told me that the -- there would be less  
21 margin calls and even if they were -- they wouldn't even be  
22 important to be obeyed or honored at that time because they  
23 knew this gentleman at Bank Hoffman, in Zurich, and that  
24 there are a number of other benefits.  
25

1 I says, "What are the other benefits, Phil?"

2 "Well," he says, "your account will be secret."

3 I said, "I have a numbered account at Swiss Bank  
4 Corporation that is secret."

5 He says, "You will have a coded account, code  
6 name. There is no way they can break that veil of secrecy."  
7 He says, "It has a dual benefit, (a), for taxes. You don't  
8 have to worry about your income taxes."

9 I says, "This interests me tremendously."

10 He says, "That is my prime purpose, income taxes.  
11 You don't have to worry about it because they have never been  
12 able to break the veil of Swiss bank secrecy on income  
13 taxes." He says, "I am not one of these guys that wants  
14 to support those sons of bitches on welfare."

15 I says, "Neither am I, Phil." I said, "Our  
16 feelings are mutual."

17 THE WITNESS: Is there some water here, where I  
18 could have a glass of water, your Honor?

19 THE COURT: Yes. go ahead.

20 Q Mr.D'Onofrio, please continue with the conversation.

21 A Yes. He said "the other advantages are, Ray,  
22 when you come out with a stock issue"--we were coming up  
23 with some stock issues -- "and you have a run upon a stock,  
24 that means that if it goes higher than at the opening price,  
25

1 gab-12

D'Onofrio-direct

2 you don't have to put up any money at al.. If a stock comes  
3 out at two dollars and opens the first day at four, you put  
4 up zero money and you are working on all the bank's money."

5 Q What did you understand "put up" to mean, Mr.  
6 D'Onofrio?

7 A Place your own money to them as a deposit to buy  
8 the security. So this was a tremendous benefit in my eyes.

9 I told him I would definitely be interested in  
10 opening up a Swiss bank account.

11 Phil then turned to Jerry and he said, "Jerry  
12 has the papers for opening this account. The only thing is,  
13 you will need a code name. Do you have a code name that you  
14 could pick?"

15 I says, "Yes. Any particular method or way of  
16 code name?" He says, "No, just something that means some-  
17 thing to you and doesn't mean anything to anyone else."

18 I says, "I think I will pick the name of my Irish  
19 setter. Her name is Gypsy." I said "My name will be Gypsy."

20 Q Please keep your voice up.

21 A I said my name will be Gypsy.

22 Jerry made a note of it. He said, "Would you  
23 like to get started trading at Bank Hofmann?"

24 I said, "Yes, indeed I would. I have just pur-  
25 chased some stock at duPont." I had purchased a thousand



1 gab-13 D'Onofrio-direct 104  
2 shares of a stock called Franklin Mint, and I had put up  
3 some twenty-five to \$30,000. If I can buy over there  
4 at half margin, and at duPont, I am putting up all my  
5 money, I would be very interested.

6 He said, "Maybe we could make the arrangements  
7 for you to transfer your funds from Swiss Bank Corporation  
8 in Zurich" --

9 Q Who said that?

10 A Mr. Stoller.

11 Q Go ahead.

12 A "-- Bank Hofmann. It would just be an intercity  
13 transfer between the banks and we could start you right  
14 off with purchasing a thousand or two thousand shares of  
15 Franklin Mint."

16 Q What happened then?

17 A At that moment I don't remember if there was a  
18 hiatus of time. I don't remember whether the phone call  
19 came in from Zurich, from Fred Herbert to the office, which  
20 was a regular thing. I don't recall as to whether Mr.  
21 Stoller called Mr. Herbert, but within 15 or 20 minutes  
22 the phone call existed between Mr. Herbert at that office  
23 and Mr. Stoller.

24 Mr. Stoller got on a line and spoke to Mr. Herbert  
25 and he said, "I have a --" First he spoke about a couple

1 gab-14 D'Onofrio-direct 105  
2 of other stocks, and they are incidental to me. I don't  
3 remember their names or the activity of the stocks.

4 He asked me to get on another phone. There were  
5 two phones in the room. I got on the one by the window sill.  
6 Phil was using the one at the desk.

7 He said, "Fred, I have a new client here and I want  
8 to introduce him to you by phone. His name is Gypsy."

9 So Fred said to me, "Gypsy, please talk a little.  
10 Talk about anything, talk about the weather, talk about --  
11 because I never forget a voice."

12 Q Who said that?

13 A Mr. Herbert.

14 Q Go ahead.

15 A Mr. Herbert.

16 Q Go ahead.

17 A From Bank Hofmann. He says, "Talk about anything  
18 because I'll never forget your voice. The voice is the most  
19 important thing."

20 He says, "Where do you live?"

21 I said, "Out in Brookville."

22 He said, "I have never been out in that neck of  
23 the woods. Are you familiar with the Waldorf-Astoria?"

24 I says, "I have a little familiarity."

25 He says, "I always stay in the Waldorf-Astoria."

1 I says, "I don't recall staying there, but I have  
2 visited the night club room on one or two occasions."

3 He said, "I'm looking forward to meeting you,  
4 Gypsy."  
5

6 In the meantime Mr. Stoller has told me that "You  
7 will be transferring some funds from one of my competitors  
8 in Zurich."

9 I said "Yes, the funds will be transferred into  
10 your bank."

11 He says, "Tell him to make it attention Mr. Herbert,  
12 and transfer the funds in, and we bankers know how to take  
13 care of that."

14 Phil had some more conversation -- I do not recall--  
15 on the phone with Mr. Herbert. One of the things I neglected  
16 to tell you, Mr. Sorkin, was the arrangements. This was  
17 not all gratuitous. I said to Phil and Jerry, "You are not  
18 going to do this for me because I am a nice guy. You  
19 know, what is in it for you fellows?"

20 He says, "Well, if you make money at Bank Hofmann  
21 by being a private client of ours, you will give to us  
22 10 per cent of your profits."

23 I says, "What if I lose money?"

24 He says, "If you lose money, it is your problem.  
25 If you make money, you have to give us 10 per cent of your

1 profits."

2 I bought the idea and proceeded to open the  
3 account.

4 Q Mr. D'Onofrio, have you ever heard the term  
5 running stock?  
6

7 A Yes.

8 Q Did that phrase come up in any conversation with  
9 Mr.Stoller?

10 A It did, yes. Mr.Stoller told me that we have the  
11 benefit of running stock at Bank Hofmann and being able to  
12 assemble it in our own secret accounts. In this method of  
13 running stock we would have the availability of not having to  
14 put up any money for our positions for the stock in which  
15 we held and make enormous profits.

16 Q What is your understanding of running stock? What  
17 does it mean to you?

18 A Running stock means to buy stock in the open market,  
19 into various areas, either to mutual funds, into other people,  
20 by touting. The artificial method of boosting a stock to  
21 a point that it does not belong by various methods of either  
22 advertising it by word of mouth and then having other people  
23 purchase it or by your own power and your own finances, and  
24 your own sources, taking a stock off the market which allows  
25 it then to artificially create a higher price.

End 4 AM

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2

Q Have you ever heard of a Lichtenstein corporation?

3

A Yes, I have heard of it.

4

Q Did you have a Lichtenstein corporation?

5

A Yes.

6

Q When was that formed?

7

A I believe it was formed --- I am not actually sure,  
8 but I think towards the end of 1969. Mr. Stoller, Mr. Allen  
9 and myself together all formed Lichtenstein corporations.

10

Q Would you tell us what the purpose of the Lichten-  
11 stein corporation was in the context of forming it?

12

MR. GOULD: I object to that, your Honor. He  
13 can say what he did.

14

THE COURT: That's right. The question also is  
15 a little ambiguous because it seems to be asking him to  
16 say what the others were purporting to do.

17

MR. SORKIN: I thought I said in the context of  
18 what he did, your Honor.

19

THE COURT: Well, rephrase it. I think it is  
20 fraught with problems.

21

Q How did you first hear of Lichtenstein corporation?

22

A Mr. Herbert, at Bank Hofmann, and Mr. Baumer, at  
23 Bank Hofmann, suggested to myself and other clients that  
24 it would be more beneficial most beneficial for us to set  
25 up a Lichtenstein corporation as a further security to

1 probing by any U.S. Governmental authorities, either from  
2 the Securities and Exchange Commission, Internal Revenue,  
3 Department of Justice, and that by setting up the Lichtenstein  
4 corporation or trust with the bank officers managing same  
5 through an attorney in Lichtenstein, I as a principal in-  
6 dividual owner would not appear, I would be able to hold  
7 bearer shares in this corporation in Lichtenstein and the  
8 attorney in Lichtenstein would accept instructions and  
9 give instructions to the two representatives of Bank Hofmann  
10 which in my case were Mr. Baumer and Mr. Herbert, and  
11 that rarely, if ever, and mostly never, would my name  
12 appear in any way, shape or form on any documents as a  
13 result of not only having a secret Swiss bank account,  
14 named Gypsy, it would now have one further removal to  
15 a foreign principality that could not be invaded.

17 Q What was the name of the Lichtenstein firm?

18 A Muriel Anstalt,

19 Q To your knowledge, did Mr. Stoller have a bank  
20 account in Bank Hofmann?

21 A Yes.

22 Q Do you know when he opened this account?

23 MR. GOULD: I object to this, your Honor, unless  
24 it is derived from conversations.

25 THE COURT: Yes. If you want to develop it as

2 a conversation, you may.

3 MR. FELDSHUH: Your Honor, at this time may I have  
4 a direction from the Court that none of this is binding upon  
5 the Defendant Frank?

6 THE COURT: This is certainly not being received  
7 as to the Defendant Frank, subject to connection possibly  
8 later, but certainly not now.

9 Q Did there come a time when you had a conversation  
10 with Mr. Stoller?

11 A Yes.

12 Q Was the subject of Swiss banks discussed?

13 A Yes.

14 Q Did you learn --

15 MR. GOULD: No, no, time and place, first.

16 Q When was the time?

17 A The time and place was, to my prior conversation,  
18 which I omitted in my narration to you in which he told  
19 me he had a Swiss bank account, and so did Jerry, at Bank  
20 Hofmann for quite some time.

21 MR. GOULD: I don't understand a word of what he  
22 said, your Honor.

23 MR. SORKIN: I object to Mr. Gould summing up,  
24 your Honor.

25 MR. GOULD: I don't understand the words the man

2 used, your Honor. All I want is a time and place.

3 THE COURT: Just a moment. You are trying to tell  
4 us that this was this conversation down on Pine Street?

5 THE WITNESS: Yes.

6 THE COURT: In early '68?

7 THE WITNESS: At that time, but I didn't put it in  
8 my narrative.

9 THE COURT: I understand. Go ahead.

10 Q Did Mr. Stoller have a code name?

11 A Yes.

12 Q Did he tell you --

13 MR. GOULD: I move to strike that out. Let's  
14 get conversations.

15 THE COURT: Yes.

16 Q Did there come a time where you had a conversation  
17 with Mr. Stoller?

18 A Yes.

19 Q Did Mr. Stoller -- where was this conversation,  
20 Mr. D'Onofrio?

21 A When I first learned of his code name?

22 Q Yes.

23 A It was at his office and Mr. Allen's office,  
24 on East 60th Street. I don't recall the address. We were --

25 Q When was it?



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2                   A       It was around May or the end of May of 1968.

3                   Q       Tell us what Mr. Stoller said and Mr. Allen said

4                   and what you said?

5                   A       We were about to embark to Switzerland on another

6                   closing, or another deal, and each of us needed documents

7                   to --

8                               MR. GOULD:   If your Honor please, I must object.

9                   We want the conversation, not what was rehearsed.

10                              MR. SORKIN:   Objection, your Honor.

11                              THE COURT:   I object to your objection, Mr. Sorkin.

12                   If you just bear me out and listen and don't get excited,

13                   we will get back on the track.

14                              I will ask the jury to disregard what the witness

15                   just said.

16                              Now, Mr. Sorkin, make it clear that we are only

17                   asking the witness to tell us about the conversation.   In

18                   late May of 1968 in this office on East 60th Street,

19                   what was said and by whom?   Would you do that?

20                   Q       What did Mr. Stoller say, what did Mr. Allen say,

21                   what did you say? .

22                              THE WITNESS:   Your Honor, may I ask a question?

23                   I have been instructed by the Department of Justice not

24                   to mention names of other securities --

25                              MR. SORKIN:   I think that is what Mr. Gould's

reference was, your Honor.

THE WITNESS: -- and in mentioning this conversation, I will be bringing up names of other securites and this is where it took place.

Q Tell us the names of the securities, Mr. D'Onofrio, what was said? Go ahead --

MR. GOULD: I would like to make an objection, your Honor.

THE COURT: I think we are in a nice little tangle which better be aired out here without any delays or interruptions further in the jury's hearing.

Ladies and gentlemen of the jury, I will ask you to take the morning recess at this point, ten minutes. Counsel remain, please.

THE WITNESS: Do I leave, your Honor?

THE COURT: No, you sit right here.

(Jury leaves courtroom.)

THE COURT: Now that the jury has left, may I suggest, and this includes you, Mr. D'Onofrio, that we simply proceed to ask the questions. If there are going to be any more interruptions of the Judge when he is trying to honor your request for help, I am going to land on any one of you without fear or favor.

Now, I am not going to repeat this again.

1 Apparently we are dealing here with the television school  
2 of advocacy. I happen to know that at least one or two of  
3 you in this room are above that school. I don't know what  
4 has happened this morning. Maybe you had too much to eat  
5 over the weekend, you are too energetic, but I don't think  
6 you are serving you clients' interests by this flaming  
7 rhetoric and this piling of objections upon objections,  
8 which is about as futile and silly a bit of nonsense as I  
9 have listened to in this building in quite a while.  
10

11 What is all this business? You want conversations  
12 about other securities?

13 MR. SORKIN: Your Honor, I will tell you, if Mr.  
14 D'Onofrio repeats the conversation he will --

15 THE COURT: That is not my question. Do you want  
16 to ask him anything that would elicit information about  
17 other securities?

18 MR. SORKIN: I don't, your Honor.

19 THE COURT: Then why do you keep saying you do?

20 MR. SORKIN: I didn't, your Honor. I asked him  
21 to avoid mentioning other stocks.

22 THE COURT: It didn't come out that way, to my  
23 hearing.

24 Second of all, if this is a problem, I would  
25 suggest to you, Mr. Gould, that we be understanding and

1 permit this gentleman to lead a bit, unless you want to  
2 hear about the other securities for some reason, and if  
3 you do, let me know.  
4

5 MR. GOULD: I am sorry we got into confusion  
6 about this, your Honor, but he has a way of asking the  
7 question and the witnesses give it back to him the way they  
8 have in the past, but I want him to pinpoint conversations.  
9 That is all I care about, a time, a place, who was present,  
10 what was said.

11 THE COURT: That is the time-honored method,  
12 but that is not the point before the house now.

13 As I see it, the point is that this gentleman  
14 claims that some unnamed personage of exalted rank in the  
15 Justice Department told him not to mention any names.  
16 I am not bound by that ruling, I don't think, but I want  
17 to find out from you, do you want this to be limited as  
18 suggested by Mr. Sorkin?

19 MR. GOULD: Well, I will confer with my confreres  
20 and give your Honor an answer. I don't know what the  
21 reference is to.

22 THE COURT: Nor do I.

23 MR. SORKIN: Your Honor, it was me who instructed  
24 him and all I instructed him to do --

25 MR. GOULD: Why can't we do this, instead of

2 wasting everybody's time, why can't he say, "We talked  
3 about other securities"?

4 THE COURT: Fine with me.

5 MR. GOULD: If he limits it to that, that is  
6 fine.

7 THE COURT: Did you hear that?

8 THE WITNESS: Yes, fine.

9 MR. GOULD: Then he won't violate whatever  
10 Mitchell or Kleindienst --

11 THE COURT: Mr. Sorkin said he was the exalted  
12 person who told him that.

13 MR. GOULD: I had a feeling it was a higher level  
14 than that. Before we recess, your Honor, can I bring  
15 one thing to your attention.

16 I have to be before the Circuit Court on a  
17 motion tomorrow morning at 10:30 and I don't think it will  
18 take more than ten minutes. It is a simple application for  
19 a stay. I am perfectly willing to go up there and leave  
20 Mr. Alenstein in charge unless we are on cross examination.

21 Can we treat that, with your Honor's indulgence --  
22 I have nobody else who can go up there, your Honor.

23 THE COURT: That is fine with me, but I would hope  
24 we are at a point where we won't have to interrupt, but  
25 let's wait and see.

(Recess.)

(In open court, jury present.)

THE COURT: Now, ladies and gentlemen, I think we have straightened ourselves out here, and the question, as I understand it, Mr. Sorkin, is what were the conversations at this meeting on East 60th Street in late May?

MR. SORKIN: That is correct, your Honor.

Q Would you answer the question, please?

A Yes, I was at East 60th Street, the offices of Mr. Stoller and Mr. Allen, and we were preparing for a visit in early June to Switzerland, and Mr. Stoller said we had to get our papers together and they had to get various documents signed on other securities from other clients and myself.

So I signed my document with my name, Gypsy, my code name, and Mr. Allen signed his document in front of me with his code name --

Q And what was that?

A His code name was Erika.

Q Do you know the name of Fred Herbert's wife?

A Yes, Erika. Mr. Stoller signed his document with his code name, Shirley, and they had with them two other clients' documents with their code names, which we collated at that time.

2 Q Who is Shirley, if you know?

3 A Shirley is Mr. Stoller -- you mean as a person?

4 Q Yes.

5 A I believe it is his wife, Mildred.

6 Q Did there come a time, Mr. D'Onofrio, where you  
7 met a man by the name of Elmer Bud Moss?

8 A Yes.

9 Q When was that?

10 A Around September or October of 1967 I met Bud  
11 Moss at the offices of Hancock Securities, also on Pine  
12 Street, along with another gentleman named Ben Friedman.

13 Q Do you know Mildred Stoller's middle name?

14 A Shirley. I think I just answer that.

15 Q Where did you first learn that?

16 A I learned it much subsequent to the fact of me  
17 learning his code name.

18 Q Where did you learn that?

19 A I don't remember if it was at Phil's bar mitzvah  
20 or a lawn party that he held that I was present, Mr. Frank  
21 was there, a lot of his friends --

22 Q His son's bar mitzvah?

23 A Yes, but I am not sure if it was a party or  
24 what, but some gathering at his house.

25 Q When did you first meet Mr. Moss?

1  
2 A At Hancock Securities, in 1969, the late part,  
3 September, October.

4 Q Mr. Moss --

5 A 1967, I'm sorry.

6 Q Who else was present?

7 A Mr. Benny Friedman, his advisor, a member of the  
8 Hall of Fame of Football, and Mr. Souran, Mr. Tover, who  
9 headed Hancock Securities, and some of the other registered  
10 reps.

11 Q Did you have a conversation with Mr. Moss?

12 A Yes, I did.

13 Q Would you tell us, please, what you said to  
14 Mr. Moss and what he said to you?

15 THE WITNESS: Your Honor, should I keep quiet every  
16 time Mr. Gould stands up in the middle of Mr. Sorkin's  
17 question or should I -- does that mean he is going to stop  
18 me, or what?

19 THE COURT: I can't answer that except to say it  
20 is a real possibility. Mr. Gould?

21 MR. GOULD: I have an objection to this -- I am  
22 going to withdraw the objection.

23 THE WITNESS: If I see him stand up, should I  
24 shut up, your Honor.

25 THE COURT: I said to you I think it is fairly



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2 likely but one can't be positive or at least as I see it,  
3 one can't be positive.

4 Don't worry about it.

5 MR. GOULD: Your Honor, can we take this subject  
6 to connection?

7 THE COURT: That is the only basis on which I was  
8 going to receive it.

9 Put the question again so the jury is advised of  
10 what we are up to.

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2 Q Mr. D'Onofrio, did you have a conversation with  
3 Mr. Moss?

4 A Yes, I did.

5 Q Tell us, please, what you said to him, sir, and  
6 what he said to you.

7 A The conversation was with other people also, Mr.  
8 Tover and Mr. Friedman. Mr. Tover told me that he was going  
9 to underwrite Mr. Moss' company known as M & H Studios, Inc.  
10 Inasmuch as I worked for Mr. Tom Souran doing financial  
11 consultation and merger work --

12 Q Tell us what Mr. Moss said to you, sir.

13 A Mr. Tover asked me to do the -- do diligence work  
14 on the company. Then Mr. Moss came into our office and I  
15 spoke with Mr. Moss. I asked him a little bit about his  
16 company. Mr. Moss told me that he had a company known as  
17 M & H Studios and prior to this day he had done some  
18 sports film work using athletes as guides for duPont, and  
19 sold some sports films for educational purposes using sports  
20 figures as the common denominator to motivate a student  
21 and that he had come across a new program consisting of  
22 vocational rehabilitation, automated tuner work and had been  
23 testing it at Brandeis High School up here in the 80th Street  
24 in New York City and had been very successful with the  
25 testing, he told me.

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I asked him how successful.

Well, he said we received an award from the New York City Police Department by keeping children off the street with it, and that young boys who are not able to matriculate to college are capable of learning with practically very little intellect but of hands on ability to tune up an automobile and make a job and make a living and earn money.

Q Did he ask you to help underwrite the company?

A At this time he did not ask me because he was a client of Hancock Securities. I was just doing the due diligence.

Q Did you back in 1967 help him underwrite M & H Studios?

A Not in 1967, no, in 1968.

Q Did there come a time, Mr. D'Onofrio, when you had a meeting with Mr. Moss at the Trattoria Restaurant in the PanAm Building?

A Yes.

Q When was that, sir?

A In the early part of 1968, somewhere around February or March, Mr. Moss visited me. I had changed jobs.

Q Where were you at the time?

A I was then working as director of underwriting

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1 gab-3  
2 for A. T. Brod & Company, 200 Park Avenue, in the Pan American  
3 Building.

4 Q Who else was present at the restaurant?

5 A An associate of Mr. Moss, and I do not recall  
6 his name.

7 Q Tell us, please, what you said to Mr. Moss and  
8 what Mr. Moss said to you.

9 A Mr. Moss told me that Mr. Tover had decided not  
10 to do his underwriting and he had given him permission -- not  
11 even permission, he said, "Why don't you go to Ray, being  
12 Ray is experienced in it having formerly worked down here.  
13 Maybe Ray will do it for you."

14 I told Mr. Moss that I would be interested in  
15 doing his company. However, I would have to have the  
16 approval of Mr. Brod because I didn't own the firm. I just  
17 work for the firm.

18 Q Did you get the approval of Mr. Brod?

19 A No, I did not get the approval of Mr. Brod.

20 Q Did you subsequently have any conversation with  
21 Mr. Moss?

22 A I had several conversations at the Trattoria.

23 The next conversation I gave Bud Moss the bad  
24 news at the Trattoria Restaurant, it was a week or two later,  
25 that Mr. Brod wouldn't accept the offering or the underwriting,

1 and I gave him the reason why.

2 He said, "Is there any other way you can help me?"

3 He said, "I need some capital, I need some money." In  
4 between he said, "Is there any way of you doing it, anyone  
5 you could recommend me to?"

6 I says very simply, "Bud, I have thought about  
7 it a great deal, anticipating that Mr.Brod wouldn't accept  
8 the underwriting. I have anticipated that I could possibly  
9 do it myself on the side, if you want to call it moonlighting,  
10 but with Mr.Brod's approval."

11 He said, "That will be great. I have been working  
12 with you, met you 20 times in the past four or five months."

13 He said, "How would it work?"

14 I said it wouldn't work at all unless you are  
15 going to meet certain specifications and desires of mine.

16 He said, "What do you want, what do you mean?"

17 I said, "I would like to be a partner in the com-  
18 pany. I would like to be one-third partner. It is M & H  
19 Studios. You and Marilyn Hertzfeld are partners in the  
20 company and if you have X amount of shares of stock, I want it  
21 split up three ways and I want a third of it. I don't  
22 want the third of it in my name, because I have had some prior  
23 bankruptcy problems and I would like to use nominee names.

24 "So if you would agree to make me a one-third  
25

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owner in the company, I will agree to take your company public and sell the issue out and you to have the use of proceeds."

Q Did you receive certain shares of M & H Studios?

A Yes, I did.

Q In nominee names?

A Yes.

Q What were the nominee names?

A One I used was Xanadu Properties, Inc. The other I used was R. Scott Barter.

Q How many shares did Xanadu Properties get, Mr. D'Onofrio?

A I can't recall exactly. I think it was 50,000 shares.

Q And Mr. Barter?

A Forty or 45,000 shares, but I can't recall exactly.

Q Mr. D'Onofrio, did you know a man by the name of Joseph Pfingst?

A Yes, I did.

Q Who was Mr. Pfingst?

A Mr. Pfingst was my former partner in a dairy and also my current attorney personally and also the attorney representing A.T. Brod & Company on current underwritings that we were doing.

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Q Did there come a time, Mr. D'Onofrio, when you had a conversation with Mr. Pfingst?

A Yes. Immediately after deciding to self underwrite M. & H. Studios, Inc., I went to Mr. Pfingst and I told him about the company.

MR. GOULD: If your Honor please, can we get a specific time?

MR. SORKIN: I am sorry, your Honor.

Q When was it?

A I will hazard a guess at the time if you just give me a moment. Probably around the end of 1968.

Q Where was the meeting?

A The meeting was at his home out in Babylon.

Q Was anyone else present?

A No, we usually sat in his living-room alone. Joan rarely brought us in a cup of tea.

Q Who is Joan?

A Joan Pfingst, his wife.

Q Did you have a conversat-on with him?

A Yes. I told Joe I think I have come upon a very good package. It is in the field of vocational education. Besides Joe being a lawyer, I said I want you to give me your thinking. I said, "I welcome your thoughts."

He said, "What is it all about?"

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1 I told him it is a hands on training program,  
2 students that aren't going to matriculate. I gave him the  
3 whole story as I have repeated to you before.  
4

5 He said, "Ray, look, it sounds very interesting. I  
6 am counsel for the Copake School District. Let me try it  
7 on for them for size. Let me see what the board of directors  
8 of the school district think about putting such a program  
9 in one of our schools out on Long Island. If they think  
10 well of it, you know, I'll give you my opinion."

11 He says, "One thing, who is going to get the legal  
12 work?"

13 I said, "No one but you, Joe. You will get the legal  
14 work. I have already arranged that."

15 Q Mr.D'Onofrio, where was M & H Studios located?

16 A West 86th Street, but I don't recall.

17 Q Just so the record is clear, did there come a  
18 time when M & H Studios changed its name to Training With  
19 The Pros?

20 A Yes. If I could refer to it as Training With  
21 The Pros, I could be much more comfortably with my speech.

22 Q It is Training With The Pros, but you knew it  
23 as M & H Studios then?

24 A Yes.  
25



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Q Let me show you now what has previously been marked as Government Exhibit 1 for identification. Would you look at this, please, and I ask you if you could identify that?

A Yes. This is an offering circular of Training With The Pros, Inc.

Q Did you work on that offering circular?

A Extensively.

Q With who else, if anybody?

A With Miss Hertzfeld, Mr. Pfingst and a little bit with Bud Moss.

Q Of M & H Studios? Is it "M" for Moss?

A Yes, "H" for Hertzfeld, Marilyn's last name.

MR. SORKIN: At this time we reoffer Government Exhibit 1 in evidence, your Honor. I show it to defense counsel.

MR. GOULD: No objection.

MR. FELDSHUH: Is this subject to connection as to defendant Frank?

THE COURT: It will be received only subject to connection.

(Government Exhibit 1 was received in evidence.)

Q Mr. D'Onofrio, did you work on the notification

1 gab-9 D'Onofrio-direct 129  
2 for Regulation A of Training With the Pros?

3 MR. GOULD: Excuse me. It might save some time if  
4 counsel would provide us with a copy of that exhibit.

5 MR. SORKIN: I would be happy to, your Honor.

6 Q Mr. D'Onofrio, did you work on what is called  
7 a notification under Regulation A?

8 A Yes.

9 Q Let me show you now what has been previously  
10 marked as Government Exhibit 1A and ask you if this is the  
11 notification that you worked on that was subsequently filed  
12 with the SEC?

13 A May I just peruse it for a second?

14 Q Surely.

15 A Yes, I am familiar with the notification.

16 MR. SORKIN: Your Honor, at this time we reoffer  
17 it. I show it to counsel.

18 MR. FELDSHUH: May I have a copy of it, Mr.  
19 Sorkin?

20 MR. SORKIN: I don't have copies now, but I will  
21 try to provide copies to all defense counsel.

22 MR. GOULD: No objection.

23 THE COURT: 1A will be received subject to connec-  
24 tion.

25 (Government Exhibit 1A was received in evidence.)

xxx

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2 MR. GOULD: I would be grateful if counsel  
3 would give us copies as soon as possible.

4 THE COURT: I would hope that this would be done  
5 with any of these significant documents.

6 MR. SORKIN: We will, your Honor.

7 Q Mr. D'Onofrio, have you ever heard of a man by  
8 the name of Joseph Bonavia?

9 A Yes.

10 Q When did you first hear of Mr. Bonavia?

11 A When did I first hear of him?

12 Q Yes.

13 A I heard of him in the meeting we referred back to  
14 before. He was one of the two signed clients that I did  
15 not name. That was on -- you asked when. That is the end  
16 of May of 1968. I heard of him, --

17 Q '69.

18 A '69, excuse me, '68. I heard of him before then,  
19 but I never -- I only heard of his code name. I didn't  
20 collate the code name with the person.

21 Q Who introduced you to him?

22 A Mr. Allen or Mr. Stoller introduced me to Mr.  
23 Bonavia.

24 Q Where was this?  
25

1 gab-11  
2 A My first introduction as a physical human  
3 being that I know he existed?

4 Q Yes, sir.

5 A That took place in 1969.

6 Q Where was this?

7 A This was at their offices on East 60th Street  
8 in relation to Training With The Pros, and they asked me to make  
9 a visit arrangement with him to go down to the company  
10 to peruse and look at the company. So I saw him physically.

11 MR. GOULD: Can I get that last read back, your  
12 Honor? I missed it.

13 THE COURT: Yes.

14 (Answer read.)

15 Q Mr. D'Onofrio, did you have a conversation with  
16 Mr. Stoller and Mr. Allen at East 60th Street and Mr. Bonavia's  
17 name came up in the conversation?

18 A Yes.

19 Q Tell us, please, what each of them said and what  
20 you said in return.

21 A Yes. They told me Mr. Bonavia was coming into  
22 town and that they would like me to introduce him to Mr.  
23 Moss, the present attorney with Training With the Pros, that  
24 he would like to look over the program. When I say "they,"  
25 I am talking of Allen and Stoller together.

1  
2 Do you want me to break out each part of which  
3 conversation, which one said if possible?

4 Q To the best of your recollection.

5 A Mr. Bonavia was more Mr. Allen's personal client  
6 than Mr. Stoller's, at least in my meetings with them.

7 Even though Mr. Stoller was present, Mr. Allen did  
8 most of the talking when concerning Mr. Bonavia.

9 Q In your presence?

10 A In my presence.

11 Q Go ahead.

12 A Mr. Allen told me that their client is coming in  
13 from the mid-west.

14 Q Did he explain to you what they meant by "client"?

15 A That he was -- they told me he was a client like  
16 myself that paid them 10 percent of his profits, and I  
17 had heard his code name many times, but didn't know who the  
18 individual was, and he was coming in from the mid-west some-  
19 where on the Beloit, Wisconsin border there, somewhere, and  
20 Jerry said he is in the real estate business developing  
21 buildings, bowling alleys and he is a very large client, and  
22 subsequent to this he will be taking down a great deal of  
23 these securities, and he would like to look at the company  
24 for two reasons.

25 One, to evaluate the company for his own benefit

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1 as to what he was going to be buying and, secondly, that he  
2 had a son and that the company seemed prone -- at this  
3 time both Jerry and I and Phil were knowledgeable of the  
4 fact that we were going to open up schools for this purpose  
5 besides distributing the product, and Mr. Bonavia wanted  
6 to know whether his son could have the advantage of owning  
7 one of these schools.  
8

9 Q Mr.D'Onofrio, you said Mr. Bonavia's code name was  
10 mentioned to you.

11 Who mentioned it to you and when?

12 A I heard it mentioned over the phone 20 or 30  
13 times prior to that day.

14 Q By whom?

15 A Mr.Stoller and Mr. Allen at their office, and at  
16 Hancock.

17 Q What was the code name?

18 A Barbon or Barbin. I am not sure.

19 Q Do you know a gentleman by the name of Muir  
20 Weissinger?

21 A Yes.

22 Q Did you ever meet Mr.Weissinger?

23 A Yes.

24 Q When did you first meet him?

25 A On or about the same time, within a week of my

1 gab-14 D'Onofrio-direct 134  
2 meetings, I am going to say again January of 1969 or February  
3 of 1969, but more possibly January.

4 Q Is this after you met Mr. Bonavia?

5 A After.

6 Q Go ahead.

7 A I met Phil and Jerry at their apartment. It is  
8 still East 60th Street. Phil told me that one of his clients  
9 was coming up, similar to Mr. Bonavia, and that he was also  
10 a client like myself and gave them the 10 per cent of the  
11 profits. He did not relate to me his code name as coinciding  
12 with his name at that time, but he is now -- expect now,  
13 Ray, something very unusual. He says do not be at all sur-  
14 prised, he says, if the guy walks in dressed as a woman or  
15 don't be surprised if he comes in wearing a wig and a  
16 mustache, he is highly creative and he is very excentric, and  
17 he doesn't wish either you nor anyone else to know exactly  
18 who he is or what he is doing in life, and it is to be all  
19 sort of clandestine.

20 So he says play along with the game. We may  
21 introduce him as a broker or a technical analyst. Whatever  
22 we do, you just play along with it. You will know it is  
23 Mr. Weissinger and fill him in properly on Training With the  
24 Pros.

25 Q Mr. D'Onofrio, did you learn at some point in

1 gab-15

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2 time what Mr.Weissinger's code name was?

3 A Yes.

4 Q Where did you learn that?

5 A I learned it from Mr.Weissinger in Zurich,  
6 Switzerland when negotiating to buy his 150-foot boat.

7 Q What was the code name?

8 A Pompeii.

9 Q Mr. D'Onofrio, let me direct your attention to  
10 approximately June and July of 1968. Did you go to Switzer-  
11 land?

12 A In June of '68 I made my first physical visit  
13 to Switzerland.

14 Q With whom did you go over?

15 A I went over with a group of people, Mr. Stoller,  
16 Mr. Allen, Mr. Pfingst, Mr. Robert Hollister, his girl  
17 friend, Britt, his attorney from Albany, whom I do not recall  
18 his name.

19 Q How did you go over?

20 A By airplane.

21 Q On the airplane did you have a conversation with  
22 Mr. Pfingst?

23 A Yes, I did.

24 Q Tell us, please, what you said to Mr. Pfingst  
25 and what Mr. Pfingst said to you.



1                   MR. GOULD: Did we get the full list of the people  
2  
3 in this group?

4                   MR. SORKIN: Your Honor, maybe we could have the  
5 question read back.

6                   THE COURT: As I understand it, you said you went  
7 over with Stoller, Allen, Pfingst, and a man named Robert  
8 Hollister and his girl friend, named Britt, and a lawyer  
9 from Albany, whose name you can't remember, right?

10                  THE WITNESS: Right.

11                  THE COURT: Anybody else?

12                  THE WITNESS: I don't recall anyone else.

13                  MR. GOULD: Thank you.

14                  THE COURT: Go ahead.

15                  Q     Mr. D'Onofrio, I asked you if you had a conversa-  
16 tion with Mr. Pfingst?

17                  A     Yes.

18                  Q     Tell us, please, what you said to him and what he  
19 said to you?

20                  A     We talked -- I first spoke to him about the  
21 security transaction we were going over on, and that conversa-  
22 tion was quite extensive, and just rhetoric past between us  
23 on that security.

24                  Q     Was there any mention of Training With the Pros  
25 in the conversation?

1  
2 A When Mr. Pfingst said to me, have you talked to  
3 the boys -- he called Mr. Allen and Mr. Stoller the boys --  
4 that was his vernacular or words when referring to them.

5 I said no, I have not spoken with the boys about  
6 Training With the Pros, which I want you to understand is  
7 still M & H Studios, but I am referring to it as Training  
8 With the Pros.

9 Q Go ahead.

10 A He said why not, Ray? I said, you don't under-  
11 stand Phil and Jerry. Their minds are directed in one  
12 direction.

13 We are going over to Switzerland to close a deal  
14 and pick up a bundle of money. I said they are concentrating  
15 on that. We have another deal in the hopper, which we are  
16 working on.

17 So their minds are now -- we are closing one deal  
18 on our way to Switzerland, another deal they are working  
19 on that is in the hopper.

20 I don't think their minds are expanded enough  
21 to think three deals at one time, I said, especially Phil.  
22 Phil is not -- not that he is not capable, he can think of  
23 20 deals, but he would not think of in this case talking  
24 about another deal while we are closing one, one is in the  
25 hopper and we are going to put another deal in his head.

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He says, I think you are wrong.

I said, Please, Joe, I know the boys a lot longer than you have and there isn't a way in the world, Joe, that I could bring this subject up to them. Number 1, I am a promoter.

Number 2, I am a manipulator.

Number 3, I am everything you want to call and these boys recognize me as such also.

So it is a con man conning another con man.

I said, how am I going to con them into three deals when we are closing one and one is ready to go?

He says, why don't we use a different approach?

I said -- excuse me just a second.

He says, I am a lawyer. Suppose I bring the deal up. He says you and I play Heckel and Jeckel and you act like you never even knew I was bringing it up. When we get to Switzerland at the right moment, at the right time -- make sure the right moment is after we closed our deal and collected our money.

Any time prior to that will not be the right moment.

I said, but I have no objections against playing Heckel and Jeckel.

He says, in fact, they will be a little bit

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1  
2 stupid by the fact that you didn't mention it to them and  
3 here I am going to be telling them as your lawyer for the  
4 company, and they will say maybe you are holding out a  
5 good deal back on them, and you want to give it to someone  
6 else instead of them.

7 I says, I buy the Heckel and Jeckel idea. I  
8 think it is a good idea and we will play the game that way.

9  
10  
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1 7 am rmrf 1 D'Onofrio-direct

2 Q Mr. D'Onofrio, when you got to Switzerland, did  
3 there come a time you met Mr. Stoller, Mr. Allen, Mr.  
4 Pfingst at a hotel called the Baur au Lac Hotel?

5 A Yes, there did.

6 Q Did you have a conversation with them?

7 A Mr. Gould is going to ask time and place.  
8 The place is around June 8th, 9th or 10th of 1968.

9 Q Did you have a conversation with them?

10 A Yes, I did.

11 Q Was anyone else present?

12 A Mr. Stoller, Mr. Allen, Mr. Pfingst and myself.

13 Q Tell us what you said to each of them and what each  
14 of them said.

15 A We were sitting at the Baur au Lac Hotel, out on  
16 a veranda, underneath a California redwood tree, and we sat  
17 down, Joe ordered a Perrier, a vishy water, Jerry Allen  
18 ordered a Perrier --

19 MR. GOULD: Do we need these details, your Honor?

20 THE WITNESS: This is what we said, ordered  
21 Perrier.

22 Q Go ahead.

23 A Mr. Stoller said to the waiter, "Give me a  
24 scotch and water."

25 I said, "I will have a Perrier."

1 rmrf 2

D'Onofrio-direct

2 Q Did the subject of Training With The Pros come up?

3 A Yes.

4 Q Tell us what was said and by whom?

5 A Mr. Pfingst, while the four of us were sitting  
6 there, looked and referred to Mr. Allen, and he said,  
7 "Jerry, have you heard about Ray's new deal, Training With  
8 The Pros."

9 Jerry said, "No, I haven't heard about it."

10 He said, "It's a fantastic new deal and I would  
11 like to tell you a little about it."

12 He says, "Ray, why didn't you tell him about it?"

13 I said, "Joe, I have been so darn busy I haven't  
14 had a chance."

15 Phil interrupted the conversation which saying,  
16 "I don't want to hear about any ndw deals, I have no  
17 interest in new deals at all."

18 Jerry Allen says, "Phil, let the guy speak his  
19 piece, let him finish. Maybe they have something we can  
20 look at here."

21 So Phil said, "Go haead, Joe, I'm listening."

22 Joe proceeds to reiterate what I have reiterated  
23 to you, the hands on program, the vocational rehabilitation,  
24 and Jerry enthusiastically proclaims that it sounds like  
25 a very hot deal because education, and especially vocational

1 rmr 3

D'Onofrio-direct

2 education is on the minds of people today and it should be  
3 very easy.

4 He said, "What is the name of the company?"

5 Joe says, "Emanate Studios," he says, "Oh my God,  
6 what a name. You have to change the name. In a name there  
7 is 50 points."

8 Q What does "points" mean?

9 A A point means \$1. Ten points would be \$10,  
10 50 points, \$50. What he was saying was, there are 50 points  
11 in a name so that if the name of the company is Emanate  
12 Studio it could be worth a dollar, if it was Kinematics  
13 or Kinectics, which he suggested, it could be worth \$51  
14 a share because the name was glamorous. The public was  
15 buying names, not substance.

16 Joe asked me was the name capable of being  
17 changed, which was our Heckle and Jeckle act, and he knew  
18 I could change the name because I owned a third of the com-  
19 pany and I said, of course we could change it.

20 Phil said, "How much of the stock could we  
21 get?"

22 So Joe looks at me without answering, because  
23 it was directed at Joe, and said, "How much do you think  
24 we could get?"

25 I said, "As much as we want."

1 rmrf 4

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2 Phil says, "How much are you coming out with?"

3 I said, "I am doing a Reg.A offering and I am  
4 thinking of 100,000 shares of stock at \$3 a share or \$2  
5 a share stock, but certainly it is a low price stock."

6 Phil says, "You don't know the game yet, you have  
7 to have a thin float, you have to have very little shares.  
8 There are two reasons. If we are going to get involved  
9 and I am not saying we are going to, first the stock  
10 has to be over \$5, because, A, major brokerage firms, like  
11 duPont, Bache and so forth will not buy stocks that are  
12 under \$5.

13 "You are going to have to think of having like  
14 50,000 shares at \$6 or less shares at \$7 or whatever number  
15 we decide. Can you arrange that?"

16 I says, "Phil, I can do anything you want. If  
17 you want 50,000 at 6 or 40,000 at 7, you name it and that  
18 is what we will do."

19 He says, "Suppose we had 40 or 45,000 at 7, how  
20 much could we get?"

21 I said, "At least 25,000 shares, I think."

22 Phil turned to Joe and says, "How would we handle  
23 it?"

24 And Joe says, "We handle it the same way we are  
25 presently intending to handle another stock we are working



on, and that would be that the bank would give an indication letter for 25,000 shares and the bank would subscribe to the stock, pay for it in the United States, and it would be funneled into each of our secret Swiss accounts for the benefit of ourselves."

Joe says, "I have worked out those things anticipating already that we can do it in this fashion."

Phil was doing jotting on paper and he says, "Jerry, I have a brilliant idea," and Jerry says, "What is it?"

He says, "We could blow this stock off to Muir and Joe," meaning Muir Weissinger and Joe Bonavia.

Q What does blow off mean?

A A point at which a stock reaches at which one person decides to give it to another person or persons or institutions or whatever it is at a ridiculously high price.

Q It is another term for sell?

A Yes.

Q What was the rest of the conversation?

A He said, "We could blow it off to them at 50,000 a share if they have an awful lot of money in their accounts from the previous deals."

I said, "What happens when they get it? We would have to rescue them, I would have to do some work,

bring in some mutual funds, some other member firms,"  
Phil says, "Don't worry, we can use some Elinors."  
He used the word plural and I don't know why.

Q Have you ever heard that term Elinors prior to  
this time?

A No.

Jerry submitted some people that he could possibly  
solicit. He talked about a research analyst that he could  
talk it up with and we figured we could get Muir.  
Weissinger and Joe out after we gave it to them at \$50 a  
share and bought it at 6 or 7, that we could get them out  
there later.

Phil says, "I really don't want to worry now about  
Muir and Joe. Fuck them, they are just a bunch of pigs.  
Muir never brought me a dinner in all the years I have  
been with them. I don't give a shit whether we get them out  
or not."

I said, "Phil, that is your opinion. I would like  
to save them again for a rainy day," and Jerry says, "Yeah,  
you don't want to kill the goose that laid the golden egg."

Q You mentioned the term, "rescue them."

What did you mean by that?

A After we gave it to them at \$50, we continue to  
promote the stock, via various means, to 60, 70, 80 or

2 thereabouts and in each area we sell their stock to the  
3 general public. Now they are out and made a lot of money  
4 and we are ready and available to tap them for another deal.

5 Q Was there anything else said in the conversation?

6 A At that point, when you interrupted me, Phil was  
7 saying, "I don't give a shit about take them out. For a  
8 million dollars, I will sell shit. This works out to a cool  
9 million bucks, the way I look at it. Who are the partners  
10 in the deal?"

11 I said, "Well, you are seeing them, the four of  
12 us," meaning Mr. Pfingst, Mr. Allen, Mr. Stoller and  
13 myself.

14 Phil said, "Joe, would you mind leaving the table  
15 for a couple of minutes?"

16 And Joe didn't mind, he walked along the patio  
17 there for a couple of seconds, at which point Phil chastised  
18 me in the fashion by telling me, "What in the hell do you  
19 have Joe Pfingst as a partner for? He is a lawyer. He  
20 doesn't deserve being a partner. What are you giving  
21 him a quarter of the deal for?"

22 I said, "Look, Phil, Joe Pfingst has been my  
23 partner for years in various enterprises and deals. He  
24 is my partner here. You have heard him speak as a partner.  
25 You have really no reason to worry about who my partners

2 are as long as you know who yours are."

3 Jerry Allen said to Phil, "It is none of your  
4 business, Phil, who Ray wants as a partner."

5 "I just don't like lawyers being a partner. You  
6 have him as a partner now in the deal we are doing and I  
7 don't even like that, but to bring him in as a full partner,  
8 I think you are crazy."

9 Jerry convinced him, "What is the difference whether  
10 we each have a third or a quarter? We are talking about  
11 a third of a million or a quarter of a million each."

12 Phil agreed and we asked Joe to come back to the  
13 table and amenities ended.

14 Q Was there any discussion as to how much stock would  
15 be sold in the Reg. A offering?

16 A We were going to try to make it between 40 and  
17 50,000 shares. We had not really made a decision.

18 Q Do you know a person by the name of Elinor Wein?

19 A Yes, telephonically, by telephone, not physically.

20 Q When did you first speak to her?

21 A I believe I was introduced to her by telephone  
22 by Mr. Stoller and Allen in the summer of '68 and she  
23 works for a member firm and Mr. Stoller and Allen talked me  
24 into going and buying potatoes, Maine potatoes, I think  
25 it was.

Q Commodities?

A I think of it as potatoes. He was convinced there was going to be a frost somewhere in the country and Maine potatoes would go up and to open an account with Elinor Wein and some man and send them in \$10,000 and I will take care of the commodity account and give me 10 per cent of the profits.

Q Do you know the other gentleman's name?

A I don't recall it. I spoke to him on the phone. When I decided to get out of potatoes --

Q Was he a partner of Mrs. Wein?

A I think they were associates. I don't know if they were partners. They acted on the telephone as though they were partners.

Q Was Mr. Herbert's name brought up in the conversation at the Baur au Lac?

A Yes.

Q Tell us what was said?

A Only in the context that besides the fourth partner he would be a 10 per cent partner along with whoever his people were at the bank in the whole package.

Q Did Mr. Herbert receive 10 per cent off every deal, to your knowledge?

MR. GOULD: I object to this, your Honor. That

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2 is a very improper question.

3 THE COURT: Sustained.

4 Q What remuneration, if any --

5 MR. GOULD: Will your Honor tell the jury they  
6 are to disregard that kind of statement by counsel?

7 THE COURT: I would so instruct the jury, but I  
8 think they probably already understand that.

9 Q Did Mr. Herbert receive anything from you on Train-  
10 ing With The Pros?

11 A He received 10 per cent of my profits.

12 Q Do you know a gentleman by the name of Martin  
13 Frank?

14 A Yes, I do.

15 Q When did you first meet Mr. Frank?

16 A In 1967.

17 Q Do you see Mr. Frank in the courtroom today?

18 A Yes, I do.

19 Q Would you please identify him?

20 A He is sitting in front of Mr. Stoller.

21 MR. SORKIN: May the record reflect that he has  
22 identified Mr. Frank, your Honor?

23 MR. FELDSHUH: He has identified him.

24 Q Who introduced you to Mr. Frank?

25 A I don't recollect the introduction, only the

circumstances upon the introduction. I had purchased --  
now, time and place --

MR. FELDSHUH: I object, your Honor, as to those  
circumstances unless he can fix the time and place and  
who was present.

THE WITNESS: I am just about to do that.

THE COURT: In other words, don't talk out loud.  
Think a minute and then answer the question.

A In 1967, at Hancock Securities, and I would guess  
it would be the summer, June, July or August, Mr. Souran  
talked me into investing in a company called ESR --

MR. GOULD: I move to strike that, your Honor.

THE COURT: I grant that. The jury will disregard  
that.

Tell the witness what is it you want from him,  
Mr. Sorkin.

Q In your first meeting with Mr. Frank, did it have  
anything to do with Training With The Pros?

A Not at all.

MR. FELDSHUH: May I have that answer?

THE WITNESS: Not at all.

MR. FELDSHUH: And the question, please?

THE COURT: He was asked as to whether or not  
his first meeting had anything to do with Training With

The Pros, and his answer was no.

MR. FELDSHUH: Thank you.

Q After the Baur au Lac, did there come a time when you saw Mr. Frank?

A Yes.

Q Where was that?

A At Mr. Frank's offices.

Q When was that?

A In September of 1969. I don't know if he was at --

Q '69 or '68 --

MR. FELDSHUH: Just a minute, please.

A I was just about to reflect. I had a dual problem, because you were going to ask where, and you changed your offices --

THE COURT: Gentlemen, we are getting all tangled up with no profit to anyone.

The question is, when did you next meet Frank, as I understand it? Is that right, Mr. Sorkin?

MR. SORKIN: After the Baur au Lac, your Honor.

THE COURT: After the meetings in the Baur au Lac Hotel?

MR. SORKIN: Yes, your Honor.

A I met him in September of 1968.

THE COURT: Next question.



1 Q Where was it?

2 A At the law offices of Feldshuh & Frank.

3 Q Who else was present?

4 A Mr. Stoller, Mr. Allen, myself and Mr. Frank.

5 Q Was there a conversation?

6 A Yes. It was around mid-September and I don't  
7 recall the purpose of the meeting, but Phil told Marty  
8 that we were coming out with a new deal, we had just  
9 come off one, and Marty said to him, "What kind of a deal?"  
10

11 And Jerry told him in the field of vocational  
12 education and whatnot.

13 He said, "How are you going to handle it?"

14 Phil says, "The same way we handled the last  
15 one, through Bank Hofmann."

16 Marty said, "Who is the attorney?"

17 I answered, "Joe Pfingst is the attorney for the  
18 company."

19 He said, "What are you going to do with it?"

20 "Blow it off to Muir and Joe, the way we handled  
21 the last one."

22 MR. GOULD: I move to strike out this part of  
23 the conversation, your Honor.

24 THE COURT: No, I will allow that. Go ahead.

25 A "Handle it the same way we handled the last one,

blow it off to Muir and Joe."

Marty said, "If it is a good stock and is going to be a hot number, make sure I get stock this time, because the last time I didn't get any stock."

That was the substance of the conversation.

Q Did there come a time you learned Mr. Frank had an account at Bank Hofmann?

A Yes.

Q When did you learn that?

A At a meeting -- when, did you say?

Q Yes.

A Mid-November or early November of 1968.

Q After this meeting, Mr. D'Onofrio, did there come a time when you had a conversation with Mr. Moss, and the meeting I am referring to is the September meeting with Mr. Frank. Did there come a time when you had a meeting with Mr. Moss?

A I had a meeting with Mr. Moss after we sent the indication letter, in October of 1968.

Q Did you see an indication letter in October of 1968?

A Well, in October of '68 -- did I see one? The answer is yes, I have seen it.

Q Let me show you now what has previously been marked as Government's Exhibit 4 for identification.

2 Would you look at that and I ask you if you  
3 can identify that?

4 A Yes, I do identify it.

5 Q Please tell us what it is?

6 MR. GOULD: No, your Honor, I object to that,  
7 as to what it is, unless it is a broad characterization.

8 THE COURT: I assume that the question -- you mean  
9 only for him to identify it generically?

10 MR. SORKIN: Yes, your Honor.

11 THE COURT: Do you understand?

12 THE WITNESS: I don't know what the word generic  
13 means.

14 THE COURT: Is it a letter, a deed, a mortgage?

15 A It is an indication letter.

16 Q Have you seen this indication letter before?

17 A Yes.

18 Q Where did you first see it?

19 A I was present at the drafting of it on a yellow  
20 tablet piece of paper in August of 1968, when Joseph Pfingst  
21 and I were in Switzerland and Joe write the letter --

22 MR. GOULD: I move to strike it, your Honor.  
23 He has responded to the question.

24 THE COURT: I agree.

25 You participated in drafting it in August of '68,

correct?

THE WITNESS: Yes.

THE COURT: All right.

Q When was the next time you saw this?

A The next time I saw it was around October 13th or 14th or 15th of 1968, when Mr. Pfingst and I were visiting Switzerland, and we had it typed up in Switzerland.

Q After that, when was the next time you saw it?

A When Mr. Moss told me he had received a copy of the letter by mail, but I returned with a copy of my own.

MR. GOULD: Your Honor, can't we restrain the eagerness of this witness in some way?

THE COURT: I would agree that Mr. D'Onofrio should only answer what he is asked. You understand this, Mr. D'Onofrio? You have been in a courtroom before, have you not?

THE WITNESS: Yes, your Honor.

THE COURT: Please refrain from adding anything to your answers. In other words, just answer what Mr. Sorkin at the moment wants and no more.

THE WITNESS: All right, I will try.

THE COURT: You next saw this indication letter in mid-October in Switzerland when it was being typed?

THE WITNESS: That is correct.

THE COURT: What is your next question, Mr. Sorkin.

Q When was the next time that you saw this letter?

A When Mr. Moss called me around late October of 1968.

Q Did you have a conversation with Mr. Moss?

A Yes, I did.

Q What did Mr. Moss say to you and what did you say to him?

A Mr. Moss called me and told me he had just received a letter of indication from Bank Hoffman.

Q Did he show you the letter?

A I went down to his office and I said, "There is no need for me to see the letter because I saw it before it was sent out, in Switzerland."

MR. GOULD: I move to strike everything after the word no.

THE COURT: Granted, and the jury will disregard it.

I thought you agreed you understood you shouldn't volunteer or add anything, Mr. D'Onofrio.

Mr. Witness, I insist you listen carefully and answer no more than you are asked. The system works better that way and it has been going for quite a few centuries.

Q When was the next time you saw this letter?

2 A The end of October, 1968.

3 Q Under what circumstances?

4 A I saw it when Mr. Moss showed it to me.

5 Q Did you have a conversation with Mr. Moss when  
6 he showed it to you?

7 A Yes.

8 Q Tell us, please, what he said and what you said?

9 A Mr. Moss told me that he was elated, that he had  
10 just received an indication letter from Bank Hofmann and  
11 that he had thought I had let him down, that the issue was  
12 not going to be sold because he had very few or no indications  
13 and he was thrilled that the letter came and he believed  
14 the letter and I told him I knew that the letter was sent  
15 because I was over in Switzerland when the letter was pre-  
16 pared and that the foreign clients had shown a great deal  
17 of interest in this indication and I am familiar with  
18 the letter and they probably will honor their commitment  
19 and buy it.

20 Q This is a copy of the letter, is that correct?  
21 (Indicating.)

22 A I believe it is a photocopy.

23 Q Do you know where the original is?

24 A I know where the original was.

25 MR. SORKIN: Your Honor, at this time we move to

have Government's Exhibit 4 in evidence.

MR. GOULD: I object to this on the ground that no proper foundation has been laid for it, for the moment.

THE COURT: Well, I am afraid, Mr. Sorkin, that that is technically correct.

Q Can you tell us, please, the circumstances surrounding the preparation and sending of this letter?

MR. GOULD: I object to that.

THE COURT: Counsel is not making that point at all, and I am sure you understand that, Mr. Sorkin. You yourself perceived the point a few moments ago when you asked him if he knew where the original was, I thought.

Q Do you know where the original is of this letter?

A The original was with the corporate books, with Marilyn Hertzfeld --

MR. GOULD: I move to strike that.

THE COURT: Yes.

Q Did there come a time when you had a conversation with Mr. Martin Frank?

A Yes.

Q When was that?

A During an investigative proceeding by the Securities and Exchange Commission in June or late -- it had to be July, probably -- early July of 1969, I had the con-

2 versation with Mr. Frank.

3 Q Where was the conversation?

4 A At the offices of Feldshuh & Frank.

5 Q Who else was present?

6 A Mr. Stoller, Mr. Allen and myself.

7 Q Tell us, please, what Mr. Frank said, if anything,  
8 with reference to this letter?

9 A Mr. Frank told me that he had succeeded in getting  
10 the corporate books back from Miss Hertzfeld, and one of  
11 the things that was most damaging to all of us was this  
12 letter and that he had seen to it that it was destroyed.

13 MR. SORKIN: Your Honor, at this time I move to  
14 have Government's Exhibit 4 in evidence.

15 MR. FELDSHUH: I object to it, your Honor. No  
16 proper foundation.

17 THE COURT: Would you let the witness see this  
18 a moment, Mr. Sorkin, please?

19 MR. SORKIN: Yes, your Honor.

20 THE COURT: Mr. D'Onofrio, in examining what  
21 we call here Exhibit 4 for identification, are you able  
22 to tell us with certainty that that is a true copy of  
23 the original indication letter which you say was typed  
24 in Switzerland sometime in the summer of '68?

25 THE WITNESS: Yes, your Honor, I am.



THE COURT: The letter will be received.

MR. GOULD: Would your Honor let me ask him some questions about that on the voir dire?

THE COURT: All right, if you like. I will withdraw my ruling subject to your asking these questions.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q You say you were present when this letter was typed?

A Yes.

Q You were in the room?

A Yes, I was.

Q Who was there?

A Mr. Herbert -- may I have the letter in front of me?

Q No, just tell us your recollection without the letter.

A There are three initials up there, one for Jack Hoover, Mr. Herbert's assistant. They used the Swiss method and so the people present, their initials must be in order on top of the letter, and you will see APH, Alfred P. Herbert, and Jack Hoover, but I don't know his middle initial, and another one, FIN, for Finnon, who was the accountant. Present was Mr. Pfingst, myself, Mr. Herbert

2 and Mr. Hoover delivered the letter back from the bi-lingual  
3 typist that had to type it for us.

4 Q Did you ask Herber to have this typed?

5 A Mr. Pfingst and myself both asked Mr. Herbert to  
6 have it typed.

7 Q Mr. Pfingst was there with you while it was being  
8 typed?

9 A The typist was in the next room.

10 Q While it was being dictated?

11 A No. It was hand inciribed by Mr. Pfingst on a  
12 yellow tablet paper. This piece of paper was handed to Mr.  
13 Herbert -- they do not have girls that re so easily familiar  
14 with English. The paper was taken out of the room -- am I  
15 going too far -- typed and brought back in and said, "Is  
16 this sufficient, is this what you want?"

17 Q Wasn't this a form letter they had where they just  
18 filled in the number of shares?

19 A No, no such thing as a form letter for that.

20 Q You didn't see them fill in a form letter?

21 A I just said there is no such thing in that bank  
22 as a form letter of that type.

23 Q You know that?

24 A I have a great deal of familiarity with that bank.

25 Q Did you participate at all in the preparation

of the yellow sheet from which this was copied?

A I deferred to my counsel, Mr. Pfingst, because he is a lawyer and I am a promoter.

Q Did you review the yellow sheet?

A Yes.

Q You looked at it?

A Yes.

Q Tell me, why is this gap here between the word "for" and the 30,000 shares of common stock?

A I have no idea.

Q Well, that is a very unusual kind of punctuation, isn't it?

MR. SORKIN: Your Honor, I don't think this is proper voir dire. I think it is more like cross examination.

THE COURT: I am going to allow it. However, may I see that just a moment?

MR. GOULD: You will see what I am referring to there, your Honor, after the word "for."

THE COURT: Anything else? Thank you.

THE WITNESS: I can't explain the punctuation gap.

Q That is the way it was written on the yellow sheet?

A As I recall it, to the best of my recollection.

2 Q You were one of the authors of the yellow sheet?

3 MR. SORKIN: Your Honor, could Mr. Gould step back  
4 from the witness, if he is going to cross examine?

5 THE COURT: Since they are both working with the  
6 document and since the courtroom is designed in a way we  
7 can't immediately retrieve, I see no other way than to allow  
8 this.

9 MR. GOULD: I am trying to show it to him, your  
10 Honor. I have no designs on him.

11 Q Aside from punctuation, why is that line dropped  
12 below the words "Indicate for."

13 A You would have to ask the bi-lingual typeist that.  
14 I am not qualified to answer that..

15 Q You didn't give any such instructions when this  
16 was typed?

17 A No.

18 Q Did you get a Xerox of this yourself?

19 A I had one at one time, but it left --

20 Q Where is it?

21 A My ex-mistress took it and turned it over to  
22 either the FBI or Government authorities known or unknown  
23 to me.

24 Q Is this the one you had that your ex-mistress  
25 turned over --

1  
2 A I don't know where the United States Government  
3 got that.

4 Q You didn't give them one?

5 A No.

6 Q When you look at this now you immediately recognize  
7 it as a copy of a paper that you had when you were with Mr.  
8 Frank?

9 A I am sorry --

10 MR. SORKIN: I don't think he testified to that,  
11 your Honor.

12 THE WITNESS: I didn't testify to that.

13 THE COURT: Let's go back. Do you have anything  
14 else?

15 MR. GOULD: No, your Honor.

16 MR. FELDSHUH: Just one question, your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. FELDSHUH:

19 Q When did you last see the original of this paper?

20 A I last saw the original of that paper when Mr.  
21 Moss showed it to me in the end of October, 1968. It is a  
22 long time ago.

23 Q That was the last time?

24 A The last time, sir.

25 MR. SORKIN: Your Honor, we offer this in

2 evidence.

3 THE COURT: I take it you gentlemen adhere to  
4 your objections?

5 MR. FELDSHUH: Yes, we do, your Honor.

6 THE COURT: Those objections are overruled and  
7 the document will be received for whatever it is worth.8 (Government's Exhibit 4 for identification  
9 received in evidence.)

zz

10 MR. SORKIN: Your Honor, it is a short letter.  
11 May I read it to the jury?

12 THE COURT: Yes.

13 MR. GOULD: Your Honor, I think it should be  
14 exhibited to them.

15 THE COURT: I leave that to counsel.

16 (Mr. Sorkin reads to the jury from Government's  
17 Exhibit 4 in evidence.)

18 DIRECT EXAMINATION

19 BY MR. SORKIN (Resumed.)

20 Q Mr. D'Onofrio, have you seen Mr. Herbert sign  
21 his name on prior occasions?

22 A Yes.

23 Q Do you identify that signature there?

24 A Yes, I can.

25 Q Whose signature is that?

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A There are two, one is Mr. Herbert's and one is  
Mr. Reese's.

MR. SORKIN: No further questions on this particular  
document, your Honor.

THE COURT: Ladies and gentlemen, we will suspend  
now for luncheon and resume at 2:10, if you could be in  
your jury room a minute or two before 2:10.

(Luncheon recess.)

(In open court; jury present.)

R A M O N      D.      D ' O N O F R I O      resumed.

DIRECT EXAMINATION (continued)

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes, sir.

Q      Mr.D'Onofrio, I believe you left off after I had read the indication letter to the jury and you identified Mr. Herbert's signature.

Mr.D'Onofrio, after this letter, after Mr. Moss gave you this letter, when was the next time you saw Mr. Frank?

A      About --

MR. GOULD: Wait a minute. Now I am confused. I didn't understand Mr. Moss to give him a letter at all.

THE COURT: I think we better rephrase that. I will treat that as an objection which I think is well-founded. Rephrase it.

MR. SORKIN: Yes, your Honor.

Q      Let me go back, Mr.D'Onofrio. Perhaps I hadn't covered it. Where did you get Government Exhibit 4 in evidence?

A      Where did I get it in evidence?



1 gab-2

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2 Q Yes. Where did you see it after you had seen it --

3 A At Mr. Moss' office.

4 Q When was that?

5 A Around October 20 or thereabouts, 1968.

6 Q Did Mr. Moss show you that letter?

7 A Yes.

8 Q Did you take it with you?

9 A No, I did not.

10 Q After having seen this letter, Mr. D'Onofrio,  
11 when was the next time you saw Mr. Frank?12 A About mid-November or a couple or three weeks later  
13 in 1968.

14 Q Where did you see him?

15 A At his office.

16 Q Who else was present?

17 A Mr. Stoller and Mr. Allen and myself, and Mr. Frank.

18 Q At this office meeting, Mr. D'Onofrio, did you have  
19 a conversation?

20 A Yes, I did.

21 Q Tell us, please-- by the way, was anyone else  
22 present?

23 A No.

24 Q Tell us, please, what you said, what Mr. Frank  
25 said, what Mr. Stoller said, and what Mr. Allen said and

1 gab-3

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2 to whom?

3 A The first thing that was said was Mr. Stoller  
4 presented Mr. Frank with a copy of the last exhibit we were  
5 talking about, that we call an indication letter. He was  
6 sitting on the far side of Mr. Frank's desk, Mr. Allen was  
7 in the center and I was on the left side.

8 I simultaneously handed Mr. Frank on his desk, not  
9 into his hands, a copy of the offering circular that we had  
10 given to the Securities and Exchange Commission.

11 Q Would that be, Mr. D'Onofrio, a copy of Government  
12 Exhibit 1 in evidence?

13 A But it was not in that form, it was in a mimeo-  
14 graphed form at that point.

15 Q Go ahead, please.

16 A And Mr. Frank first looked to the indication letter  
17 that Mr. Stoller had handed him and stood up, read it a  
18 second, just a brief second, and he said, "You stupid shmucks,  
19 who the hell sent this letter?"

20 So I picked up the ball on my side of the table.  
21 I says, "Marty," I says, "Pfingst and I sent this letter.  
22 We did it similar to one of the other deals that we had did.  
23 This was our instructions and we did it the same way."

24 He says, "That's what you get for using a country  
25 bumpkin lawyer like Joe Pfingst, he's a shmuck, he doesn't

1 gab-4

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2 know anything about the SEC."

3 I says, "Look, Marty, we only did what we thought  
4 was right. We did exactly as we had done once before."

5 He says, "Now you have a lot of troubles." Jerry  
6 Allen gets up and says, "What do you mean a lot of troubles?"

7 He says, "Look," he says, "Number 1, you are  
8 getting an indication letter from Bank Hofmann. You are  
9 doing a Regulation A offering. According to the rules and  
10 regulations of the SEC, there is no way that Bank Hofmann  
11 can have the knowledge that Training With the Pros is going  
12 to offer stock to the public because the only ones privy to this  
13 information are the officers of the company, the attorneys  
14 and the Securities and Exchange Commission. It is not  
15 a published fact."

16 "So how in the hell was Bank Hofmann going to  
17 indicate to Training With the Pros for 30,000 shares of stock  
18 when they know nothing about it?"

19 I said, "We did it the same way as the other  
20 deals."

21 He says, "The other deal is different. The other  
22 deal, the company was public already. It had a bond issue.  
23 It was a convertible bond issue. So an indication letter  
24 from them was different than this. The bank could have had  
25 knowledge that there was going to be an offering of stock

1 through some of its bondholders."

2  
3 So Jerry says, "Look, we have got troubles." He  
4 says, "What do we do? How do we get out of it? What is  
5 our problems?"

6 So Marty says, "Look, how does the deal stand  
7 now?"

8 I then answered for the three of us. "As it  
9 stands now, we originally had four partners in the deal,  
10 Joe Pfingst, Jerry Allen, Phil Stoller and myself." I  
11 says, "As the result of Joseph Pfingst getting elected to the  
12 Supreme Court," I said, "he no longer is a partner."

13 Q That is the State Supreme Court, isn't it, Mr.  
14 D'Onofrio?

15 A Yes, of New York State. So he no longer -- he  
16 told me he didn't want to be a partner when he went on the  
17 bench.

18 Marty said, "All of a sudden he puts on a pair of  
19 robes and he's got religion."

20 I said -- I am sorry.

21 MR. FELDSHUH: What did you just say?

22 THE WITNESS: I said --

23 Q Mr.D'Onofrio, I will have the reporter read  
24 back the question and answer

25 MR. FELDSHUH: Are you reporting to us a conversa-

1 gab-6

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2 tion or are you telling --

3 A The conversation.

4 MR. FELDSHUH: Just the conversation?

5 THE WITNESS: Yes.

6 MR. FELDSHUH: What he said, what you said and what  
7 somebody else said.

8 THE WITNESS: Yes.

9 THE COURT: Let's go ahead.

10 Q Go ahead, Mr. D'Onofrio.

11 A "All of a sudden he's got religion."

12 I says, "He doesn't want to be involved in a deal.  
13 We are going to give him, however, some stock in the  
14 original offering to himself, his family, members of his  
15 family, but he is not going to be involved in a deal."

16 He said, "What's the rest of the setup?"

17 Phil said, "We are going to take the stock, we are  
18 going to take about 20, 25,000 shares of it, we are going  
19 to go to 50 with it and we are going to blow it off to Muir  
20 Weissinger and Joe Bonavia." And he says, "You know, what  
21 happens after that?"

22 I says, "I think after that I have a rescue matter.  
23 I think I have George Van Aiken over at Baer, Wald & DeBoor.  
24 I think we have a rescue for them."  
25

1 gab-7  
2 He says, "That's fine. Now" -- he says, "look  
3 I am going to show you how to do the deal without getting  
4 caught. You fellows follow my direction," he says, "and  
5 everything will be fine."

6 So we all listened intensely. He says, "First  
7 of all" --

8 Q Who is this talking to you now?

9 A Marty Frank.

10 Q Go ahead.

11 A He says, "No 25,000 shares." He says "It is too  
12 much of the issue of 42,000 shares. It would not be a bona  
13 fide public offering and it would raise a flag to the SEC."

14 So I don't remember whether it was I or Jerry,  
15 which one of us said next how many shares can we have, but  
16 one of the two of us asked that question.

17 And Marty says, "The most you can have is 15,000  
18 shares." Phil thros up his arms and says, "Fuck it, for  
19 15,000 shares the deal ain't worth it."

20 Marty says, "Wait a minute. Would you let me  
21 at least finish."

22 Jerry says, "Phil, please keep quiet, let Marty  
23 finish. You get 15,000 shares and you get it in the form  
24 of nominees. "

25 May I have a drink for a second?

1 gab-8  
2 He says, "Do each of you have five people you can  
3 trust? Do you?"

4 Phil says, "I have five people I can trust."

5 I says, "I certainly have," and poor Jerry says,  
6 "I don't know if I have five people or not." But evidently  
7 we each admitted to the fact that we could supply ourselves  
8 with five nominees apiece, that each of us would take 1000  
9 shares, Marty says, in these nominees' names.

10 Q Mr.D'Onofrio, what was your understanding of what  
11 a nominee was or is?

12 MR. GOULD: If your Honor please, could we  
13 just get the rest of the conversation before we get --

14 THE COURT: I think I would go along with that.

15 MR. SORKIN: Very well, your Honor.

16 Q Mr.D'Onofrio, disregard the question. Please  
17 tell us the remainder of the conversation.

18 A He says, "Each of us will sell two nominees, 1000  
19 shares apiece, for a total of 5000 shares." He says, "Phil,  
20 don't worry about it. Did you ever hear of an after market?  
21 You can always buy stock, you, Ray and Jerry, in the after  
22 market. There is no law in the world that prohibits anyone  
23 from owning all the stock in the company that they want.  
24 After you get your 15,000 shares,"he says, "I will tell you  
25 what you are going to do. After you get it, if you want



1 gab-9

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2 more stock and you want 25,000, don't be a chazar." A  
3 chazar, my impression, in Jewish is for pig. "Don't be  
4 a chazar. Take the 15,000 shares. Take the stock in the  
5 after market and work from there."

6 Phil bought the idea. I bought it and so did  
7 Jerry.

8 He says, "Here is the way I want you to do it. You  
9 have the stock issued to your nominees. On the day of the  
10 opening of the stock" -- he says "I am going to ask you a  
11 question, Ray, what do you think the stock is going to open  
12 at?"

13 I says, "Coming out at 7. I think I am going  
14 to open at about 13."

15 He says, "No good. Make sure you make the first  
16 trade in the six or nine dollar level," he says, "because you  
17 are going to be buying it back from your nominees at a couple  
18 of dollars more than they are going to be paying for it.  
19 In other words, if they are paying \$7, you give them \$9."

20 Phil says, "Fuckem, I'm not going to give them  
21 two dollars a share profit."

22 He says, "A dollar a share is plenty, a thousand  
23 dollars for a day's work is plenty for each nominee. I'm  
24 not going to give them any more than that."

25 Marty says, "You do what you want to do. I am



1 recommending that you give them at least a couple of  
2 dollars a share. God forbid later the stock goes high, they  
3 won't become pissed off."  
4

5 So at this point Phil is totally sold on Marty's  
6 idea and so am I, and Marty reaches across the desk to  
7 take my document that I handed him, which was the offering  
8 circular, and he looks at the front page, he turns right  
9 away to the rear. In looking at the rear he looked at  
10 the balance sheet.

11 In looking at the balance sheet he looked at  
12 me and he shook his head in vain and he said, "My god, what  
13 a shitty company." He says, "They ought to put you in jail  
14 for selling shit like this to the public. How do you get  
15 away with it?"

16 He says, "These are balance sheets," and he had  
17 on his desk about four, five other offering -- they weren't  
18 offering circulars, they were S1 forms, long forms.

19 And he made me look through their balance sheets  
20 and they were all quite substantial. They all had earnings,  
21 they all had good assets and they were quite good companies.

22 I says, "Marty, I sell shit and glamour. That's  
23 my game, but don't criticize me for it."

24 He says, All right, now I have shown you the way,  
25 how everything is going to be. What am I getting for it?"

1                   Phil says, "What do you want?"

2                   Marty says, "I want a thousand shares of stock,"  
3                   and he said, "I want it in my account over at the bank."

4                   And he said, "I want \$15,000."

5                   Phil then says, "I'll give you the thousand  
6                   shares of stock, Marty, but I am going to give it to you not  
7                   for nothing, at our cost. If we pay our nominees \$9 or \$8.50  
8                   or \$9, I'll give it to you at our cost."

9                   He says, "I don't care, I'll pay the price, tell  
10                  Freddie to charge my account for it and I'll get the thousand  
11                  shares. Wait a minute, Marty. I'm not in on this thous-  
12                  and shares, I have my own problems, I have other people to  
13                  take care of. I'll take my part of the 15 G's, my share  
14                  in payment, but the thousand shares comes from these two  
15                  guys, Phil and Jerry. It has nothing to do with me and  
16                  I want you to understand it here and now."

17                  Phil and Jerry said fine, they would take care of  
18                  the shares. He then said, "I want you fellows, as you  
19                  go along on this deal, you don't do anything, you don't go  
20                  to the bathroom unless you talk to me if it concerns this  
21                  deal. "

22                  We are about to get up and leave and the last  
23                  remarks I remember Marty said, "You ought to feel pretty  
24                  happy."  
25

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1

2

I said, "Why should I be happy?"

3

He said, "Your partner was just elected to the Supreme Court."

4

5

I said, "What good does that do me?"

6

He says, "Look, having a partner for many years, a Supreme Court Judge, is going to be able to help you in the future."

8

9

I says, "Help me where? He sits in Suffolk County, in the asshole of the world in Riverhead. What the hell am I going to get out of him out there?"

10

11

12

He says, "He sits in the Tenth Judicial District."

13

I said, "What is that?"

14

He said, "That's Nassau and Suffolk."

15

I said, "Marty, he is going to be of no help to me at all. He's a Supreme Court Judge, but he is not in the securities field." I says, "I very rarely have my problems in that neck of the woods anyway."

16

17

18

19

Q Mr.D'Onofrio, did there come a time when you learned the name of Mr.Frank's account?

20

21

A Yes.

22

Q When was that, sir?

23

A I learned the name of Mr.Frank's account when in a subsequent year I had to transfer --

24

25

MR. GOULD: If he would give us the time, would

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D'Onofrio-direct

1 you please?

2 A I am going to in just a second.

3 Q Tell us the year. If you can't answer, without  
4 thinking out loud, don't think out loud. This to yourself.

5 A I am sorry. I believe it was 1970 early. 1970  
6 early.

7 Q Did you learn the name of that account?

8 A Yes.

9 Q What was the name?

10 A Lance.

11 Q Mr. D'Onofrio, after this conversation in Mr.  
12 Frank's office, did you then have a conversation with Mr.  
13 Herbert?

14 A Yes, I did.

15 Q Where was the conversation?

16 A In Zurich, Switzerland.

17 Q Who were you with, if anyone?

18 A Phil Stoller, myself and a gentleman named  
19 Irving Cott, flew over together, but Mr. Cott was not in the  
20 meeting.

21 Q I neglected to ask you, Mr. D'Onofrio. Let's go  
22 back. Tell us, please, what the term nominee meant to you  
23 and I am referring to the conversation you had with Mr.  
24 Frank?

25

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D'Onofrio-direct

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2

A What does a nominee mean to me?

3

Q Yes.

4

A A nominee is a person who holds stock that is registered in their name at the bank with a transfer agency, but in reality they only hold that stock beneficially for a third party or persons unknown or known to them. They are not the direct owners although it is in their name.

9

Q Let's go ahead to that conversation with Mr. Herbert in Zurich.

10

11

12

13

THE COURT: Apparently there came a time after this meeting in Frank's office that you went to Switzerland again, is that so?

14

THE WITNESS: That is correct, your Honor.

15

THE COURT: When was that trip?

16

17

18

THE WITNESS: About a week after that meeting. So that could be around November 25 or Thanksgiving area of 1968.

19

Q Did you have a conversation with Mr. Herbert?

20

21

A Yes, we had a meeting with Mr. Herbert. Mr. Stoller, Mr. Herbert, myself and Mr. Ballmer.

22

23

Q Tell us, please, what was said and by whom and to whom?

24

25

A The meeting was held at Bank Hofmann in Zurich, as I said, the end of November of 1968. We then -- I told --

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D'Onofrio-direct

1 at Phil's suggestion I was more of the detail man. Phil  
2 said, "Ray, will you explain everything to Freddie and Ernest  
3 Ballmer as to how we are handling the deal now."  
4

5 So I told Ernest Ballmer, who was one of the  
6 directors of the bank, that we have changed our way and  
7 method of doing this Training with the Pros deal, that we had  
8 a meeting with Marty Frank and that the indication letter that  
9 Mr. Pfingst and I had sent previously at our suggestion from  
10 the bank to put this stock into our private accounts was  
11 illegal, improper and against the rules of the SEC, and we  
12 could not do it in this fashion.

13 Mr. Ballmer says, "I don't understand why we cannot.  
14 The bank can buy plenty of stock, all the stock they want  
15 in London, in Zurich, in Paris." He says, "What are these  
16 SEC rules that make it improper? As long as we buy the  
17 stock and pay for it at the bank, what the heck difference does  
18 it make?"

19 "Nevertheless, these were our instructions from  
20 Marty and we have to do it in a different fashion. We are  
21 going to use nominees."

22 I then had to explain to him what nominees were,  
23 like I just explained to you, and we would be coming over  
24 right after the public issue. It would take about three  
25 weeks, I said, or four weeks for Irving Trust Company, who

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1 was the transfer agent, to issue the stock and then we would  
2 be coming over to have the stock put into our accounts.

3  
4 Freddie asked if the blow-off still was going to  
5 be at \$50 a share to Muir Weissinger and Joe Bonavia, and  
6 we told him yes. I also told him that Marty Frank had  
7 instructed us at this previous meeting in mid-November that  
8 when we went to the bank, in order to throw the SEC off base,  
9 that Marty Frank wanted us to get from the bank a bill of  
10 sale, (A), with our name on it, our address in the United  
11 States, not to naturally mention our secret coded names,  
12 a bill of sale, a receipt for the nominee certificates,  
13 another document verifying the sale and Mr. Ballmer says this  
14 seems like too much paper work.

15 I says, "It has to be done."

16 He says, "I trust Marty Frank. I know Marty Frank.  
17 If it has to be done, we will do it. I am telling you I  
18 don't like it because it is an awful lot of paper work."

19 I says, "You also have to give us checks drawn  
20 on a New York bank that Phil, Jerry and I will take back  
21 and record the \$2 profit that we are going to be making  
22 or a dollar profit for internal revenue purposes, but  
23 these are the instructions of Marty, and this is the way  
24 it has got to be done," and they agreed, although it was  
25 a lot of paper work, that they could accomplish it and do



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it.

We also told them we would be buying stock in the  
after market.

Phil then told Freddie that he would give him  
the instructions as to how to buy the stock in the after  
market, at what prices and where it was to be made available.

End 1 PM



2 Q How much did you have to sell your 5,000 shares  
3 to the bank for?

4 MR. GOULD: I object to that, your Honor. I  
5 don't understand whether that is an attempt to elicit a  
6 conversation or not.

7 THE COURT: I don't either. Also this assumes a  
8 state of facts I don't believe we have established here.

9 Q Mr. D'Onofrio, did there come a time when you had  
10 a meeting at a restaurant called the Camelot Restaurant?

11 A Yes.

12 Q When was that, approximately?

13 A Mid-December of 1968. I met at the Camelot  
14 Restaurant, and I don't know what street it is on, but it  
15 is near Jerry Allen's apartment --

16 Q Who else was present?

17 A Mr. Stoller, Mr. Allen and myself.

18 Q Did you have a conversation?

19 A Yes.

20 Q Tell us what you said to each of them and what  
21 each of them said to you?

22 A Mr. Allen said to me he was having problems  
23 with Mr. Stoller on the nominees, that he was unable to come  
24 up with five people that he could trust and that Joe  
25 Arden who works for them in his office, was one of the

1  
2 nominees they would be using, plus one or two of his  
3 relatives, Mr. Arden's relatives, and he wanted me to  
4 sort of act as an arbitrator between Phil, Jerry -- between  
5 the three of us, that I should resolve this in some way  
6 in Jerry Allen's behalf, because he couldn't get  
7 nominees.

8 I said, "Jerry, have you exposed all avenues?"

9 He said, "What do you mean, exposed all avenues?  
10 What are you doing?"

11 I said, "I am working mine in a different fashion.  
12 I am using nominees, but I am not going to give them the  
13 stock, as Marty suggested, and then buy it back at a dollar  
14 or two more; I am going to give them the stock and then let  
15 them keep a small portion of it to sell at any price they  
16 want and keep all the profits they can make out of it and  
17 then take back the balance, but I am using my mother's  
18 maiden name, Dorothy Gerby," and he said, "That's good."

19 I said, "I am using my first ex-wife's maiden  
20 name, Elizabeth Germant. If you start using maiden names  
21 maybe you can come up with more nominees."

22 Jerry said even that wouldn't help him.

23 I said, "Phil, why don't you work a little harder  
24 and let Jerry have Joe Arden and his people? Why do we  
25 have to have a big battle over nominees?"

2 And at that meeting Phil agreed to let Jerry  
3 use Joe Arden and/or his people to help him out.

4 Q Have you ever heard of a person named Rube Pollin?

5 A Yes.

6 Q Do you know who that person is?

7 A It is a nominee of either Mr. Stoller or Mr. Allen.

8 Q Have you ever heard of a person by the name of  
9 Dolores Abramson?

10 A Yes, that is a nominee of Mr. Stoller's.

11 MR. GOULD: I was a little slow in reacting to  
12 that. I object to that and move to strike out the answer.

13 THE COURT: Yes, I am going to grant that. We  
14 are getting the cart well before the horse, Mr. Sorkin, and  
15 the jury will understand when I saw we are going to strike  
16 that and disregard it and you go back to the track here.

17 Q Do you know which people Mr. Stoller used as his  
18 nominees?

19 MR. GOULD: I object to that, your Honor.

20 THE COURT: I am going to sustain that objection.  
21 We have not gotten to what happened and we are always  
22 looping around and it is very confusing, from your own point  
23 of view, I would think. I want you to stay on the track  
24 and we will get to all of this in the right way, if it is  
25 going to happen.

Q Did there come a time when Mr. Stoller told you which five people he was going to use as his nominees?

A Yes, there did come a time when we had a meeting at Mr. Frank's office, around the beginning -- February 22nd, 23rd, 24th, I don't remember the exact date, but right after the stock was issued, and at that point we were all knowledgeable of who each other's nominees were because we each had our certificates laid out in front of us.

MR. GOULD: I move to strike that out, your Honor.

THE COURT: Yes. Again, Mr. Witness, that is not responsive.

Apparently, you are telling us there was another meeting at the offices of Mr. Frank in mid-February. What year?

THE WITNESS: 1969.

THE COURT: Next question, Mr. Sorkin.

Q Did you have a conversation with Mr. Stoller and Mr. Allen and Mr. Frank at this meeting?

A Yes. We were preparing to embark to Switzerland. This meeting took place at Mr. Frank's office on or about February 22nd, or 23rd, 1969, and we met at the office and we proceeded to tell Mr. Frank that we had accomplished -- I said we accomplished everything we set out to

1 do and we each had our certificates in front of us. I  
2 showed Mr. Frank my certificates with the stock powers.  
3 Mr. Stoller showed Mr. Frank his certificates, and I  
4 don't remember if they had stock powers or not, and  
5 Mr. Allen showed Mr. Frank his certificates, which I don't  
6 recall one or two had stock powers, but there was an ob-  
7 vious flaw which made me recall this --

8  
9 MR. FELDSHUH: I move to strike out about the  
10 obvious business, your Honor.

11 THE COURT: We will disregard that statement.

12 A I looked at the certificates that Mr. Allen pre-  
13 sented to Mr. Frank and I said to Marty, "Marty, these  
14 certificates are no good. We are going to be going over  
15 to Bank Hofmann on a useless trip."

16 He said, "What do you mean they are no good?"

17 I said, "You notarized the certificates and the  
18 bank won't accept the notarization of the certificates when  
19 we get over there. This is going to be a wasted trip."

20 He said, "Of course they will accept the notariza-  
21 tion."

22 I said, "You are a lawyer, I am a broker, I have  
23 been in the brokerage business, and the only way Bank  
24 Hofmann will accept the certificates when we go over is  
25 either they are guaranteed by a bank or they are guaranteed

1 by a New York Stock Exchange member firm or they are guaran-  
2 teed by any NASD broker-dealer but reguaranteed by a bank  
3 or member firm. In going over with your notarization  
4 on these certificates, we are just going to walk in and  
5 walk out and have a jolly, useless trip."  
6

7 Mr. Frank says, "That is the way they are going to  
8 be," Jerry says, "We have one other problem: Have you  
9 checked with the court, because the boys are getting  
10 ready," meaning Phil and myself, to leave for Switzerland  
11 and have you checked with the court to see if I am free to  
12 leave?"

13 He had some other kind of a problem. The firm  
14 of Feldshuh & Frank represented him --

15 MR. FELDSHUH: Objection. Just give us the  
16 conversation.

17 A Marty got on the intercom or telephone and spoke  
18 to someone and I don't what was said, but then he said to  
19 Jerry, "It is all arranged, you are free to leave, you will  
20 be able to to go to Switzerland with the boys."

21 Q At this meeting did you learn which five people  
22 Mr. Stoller used?

23 A I saw the certificates and the guaranteed  
24 signatures and some of them were notarized and I would have  
25 to say yes.

Q Do you recall any of the names at this time?

A I recall a Mr. Brief, I recall Pollin, I recall a Dolores Abramson, I recall another gentleman I met but I can't recall his name and I would only be able to recall it if it was repeated to me. I recall Joe Arden, and I recall Janis Hickock, which is Jerome Allen's wife's maiden name, and I recall that Jerry had a thousand shares in his own name, because he was still short of nominees, and I can't at this moment recall the other names.

Q Prior to this meeting which you said was around February 24th, in Mr. Frank's office, when was the last time you had seen him previous to that, previous to February 24th?

A We had a meeting previous to that, previous to the ordering circular becoming effective.

Q Where?

A Mr. Frank's office.

Q Who else was present?

A Mr. Frank, Mr. Allen, Mr. Stoller and myself. This was at his office on or about February 2nd, the first or second, I am not sure.

Q Tell us what was said?

A Mr. Frank said, "How is the offering circular coming along?"



1 I said, "Pat Barton, who os now the attorney,"  
2 which is Mr. Pfingst's nephew, "told us that we should be  
3 effective within the next week. We had some accounting  
4 problems, Marty, and should be effective within the next  
5 week or ten days, but I am not sure."

6 He says, "Is everything fine?"

7 I said, "Everything is fine with the offering  
8 circular," he said, "How many stockholders do you have?"

9 I said, "I will hazard a guess, 75, 80, 85."

10 He says, "I want you to have over 100. If you  
11 have over 100, it will look more like a public offering."

12 I said, "For me to get 100, I would have to dole  
13 out shares in 50s, 25s and, who knows, when these people  
14 are buying the shares, who wants to pay \$200 for 25 shares  
15 and I may have a problem."

16 He said, "I want to make sure when you dole out  
17 the stock people that wrote in toget the stock" -- wrote  
18 in at random -- "that you give some stock to these people  
19 and I don't want you to know them, Phil to know them or  
20 anybody in the group to know them. This way if anything  
21 happens with the SEC there will be a lot of people called  
22 down that don't know anybody and that got stock and made  
23 money. That is up to you to see the distribution of  
24 that takes place."  
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I will take care of my end but you are giving me a tough problem."

I don't recall any further conversation.

Q Let's go on from the February 24th meeting.

After that meeting, when was the next time you saw Mr. Stoller?

A After the February 24th meeting?

Q Yes.

A Well --

Q Did you go to Switzerland?

A Yes, I went to Switzerland with him on or about March 11th, 12th or 13th, I don't recall.

Q Did you have anything with you when you went over?

A Well, we met in the Swissair lounge at Kennedy Airport the night prior to going over and we went over -- Jerry was unable to go with us, as it turned out, and he did not get permission from the Court. We sat down at the Swissair first-class lounge and went over the documents --

THE COURT: Who is we?

THE WITNESS: Mr. Stoller and myself.

A We went over all the documents prior to going and then went to Switzerland and met with Mr. Herbert and Mr. Ballmer, Mr. Stoller and myself.

Q Prior to going over there, did you have a

conversation in the Swissair lounge with Mr. Stoller?

A Yes.

Q Tell us what you said to him and what he said to you?

A I said, "Phil, I don't care what you say we are going over with these certificates that Marty notarized and we are going to make a wasted trip. I am saying it once again for the purpose of breathing in fresh air. It is a hell of a thing to go and waste a trip. However, I know Freddy Herbert, they have correspondence and signature stamps of other correspondence. Whether or not they will use it or not, but I feel uncomfortable about going over with the package not prepared properly in the paperwork end."

Q Let me show you now what has previously been marked as Government's Exhibits 2-A, 2-B, 2-C, 2-D, 2-E in evidence and I show you these certificates and ask you if you have ever seen them before?

A These are all my nominees.

Q Who are they?

A One is Ruth Recca, for 1,000 shares. The second one is Mrs. Kathleen Howe, for 900 shares. The third one is Warren Bundy for 1,000 shares. The fourth is Paul Strauch, for 1,000 shares. The fifth is Kathrine T. Osborne for 1,000 shares. . .

Q So you took over 4,900 shares?

A Yes.

Q Could you please tell the Judge and jury how you came to acquire those 4,900 shares?

MR. GOULD: I object to that, your Honor.

THE COURT: Could you reshape that? I don't know what you mean by how he came to acquire them -- physically?

MR. SORKIN: Physically, your Honor.

Q Did you have those certificates with you when you went to Switzerland?

A Yes.

Q Can you tell us how you came to get them physically?

MR. GOULD: I object. I guess he means who gave them to him.

THE COURT: I guess so, but let's go ahead.

Q Go ahead.

A Four of the certificates were acquired by a woman I have lived with, Muriel J. Barder. She visited the clients and picked them up. One of the certificates I acquired directly, Mr. Bundy's, who was a relative of my partner, Mr. Feeney, and I picked that up directly myself.

2 Q What if anything did you ask these people to  
3 do with respect to these certificates?

4 MR. GOULD: I object to this.

5 THE COURT: You want him to tell us what  
6 these people told him?

7 MR. SORKIN: No, your Honor. My question was  
8 what if anything did he tell these people to do with respect  
9 to the certificates.

10 MR. GOULD: Objection. That is conversation  
11 with these people --

12 THE COURT: I don't understand that, I am baffled  
13 as to what importance it might have. He has the shares and  
14 we are now going to Switzerland. Let's stay on the track.  
15 We wander around, Mr. Sorkin, which from your point of  
16 view, I continue to be puzzled about. Why do you want to  
17 twist all of this up?

18 Q Have you seen Kathrine Osborn sign her name?

19 A Yes.

20 Q Is that her signature on the stock power on the  
21 back?

22 A Yes.

23 Q Have you seen Mr. Strauch sign his name?

24 A Yes.

25 Q And Kathleen Howe?

2 A Yes.

3 Q And ruth Recca?

4 A Yes.

5 Q Is that her signature and Miss Howe's signature?

6 A I am familiar with all their signatures, yes.

7 Q Did you ask them to sign these certificates?

8 MR. GOULD: I object to that.

9 THE COURT: I will allow it.

10 A I asked them to sign them and have them guaranteed  
11 at their local bank.

12 MR. GOULD: If your Honor please, I am going  
13 to move to strike out the whole answer. He was asked one  
14 question and he gave back a different answer and that  
15 conversation between them and these people is not binding  
16 on anybody in this case?

17 THE COURT: I would quite agree on both counts.

18 Put the question again and let's have an answer  
19 only to the question. Don't volunteer anything.

20 THE WITNESS: Yes, your Honor.

21 Q Did you ask these people to sign these certificates?

22 THE COURT: Yes or no.

23 A Yes, I did.

24 Q Did you ask them to get their signatures guaranteed -

25 MR. GOULD: That is objected to.

1 THE COURT: I will allow that.

2 MR. GOULD: Would your Honor hear me? It is just  
3 a technique for getting in the whole conversation.

4 THE COURT: It is not a conversation as such and  
5 if it is, I think it is an exception to the hearsay rule.  
6 I don't want to argue with you. You were technically correct  
7 the other way, but this way it seems to me is correct  
8 too. You go ahead and let's get this finished up. It  
9 isn't very weighty in any event, I don't think.

10 Q Did you ask them to get their signatures guaranteed  
11 at their banks?

12 A At their local banks, yes.

13 Q You flew over to Switzerland with Mr. Stoller?

14 A Yes.

15 Q Did you meet anyone in Switzerland with Mr.  
16 Stoller?

17 A Mr. Ballmer and Mr. Herbert at Bank Hofmann.

18 Q Did Mr. Stoller have anything in his possession?

19 A He had all of his certificates and his powers --

20 Q Stock powers?

21 A Stock powers, if any, and he had all of Jerome  
22 Allen's but only one or two of them contained stock powers  
23 and the others did not have powers.

24 Q What did they have, do you recall?

2 A I recall them having notarization.

3 Q Whose notarization?

4 A Mr. Frank's.

5 Q When you got to Switzerland, did you have a  
6 conversation with Mr. Herbert?

7 A Yes.

8 Q When was the conversation?

9 A At Bank Hoffman, in Zurich, in one of their  
10 conference rooms.

11 Q Who else was present, if anyone?

12 A Mr. Herbert, Mr. Stoller and myself.

13 Q Tell us what Mr. Herbert said, what you said and  
14 what Mr. Stoller said.

15 A I told Mr. Herbert that here were my certificates  
16 and powers and I would like him to make me up a bill of  
17 sale for the \$10 a share, give me a check for \$49,000, less  
18 costs, make me up a receipt for my certificates.

19 Phil then told Mr. Herbert to make him up a check  
20 for \$50,000, less any costs, give him a receipt for his,  
21 and handed him his, and then he handed him Jerome Allen's  
22 certificates and asked him to make up a check for Allen,  
23 give him a receipt and the various documents to go with it,  
24 and as he looked at Mr. Allen replied to Mr. Stoller,  
25 "These are no good."

2 Mr. Stoller said, "What do you mean, they are no  
3 good?"

4 He said, "They are not guaranteed by a bank."

5 I said, "I told you, Phil, you were going to  
6 have this problem. Freddie, you have corresponding banks,  
7 can't you have one of their signature stamps on and Bank  
8 Hofmann recertify the signature so we don't have a wasted  
9 trip?"

10 He said, "Let me check and find out."

11 He left the office and Phil and I, I don't recall  
12 the conversation we had while he was out, but he returned  
13 very quickly and said, "No good, we will not guarantee the  
14 signatures of Mr. Allen. You are going to have to take them  
15 back to the United States."

16 Phil said, "Can we at least go back with his check  
17 and with his documents and bring you back the guaranteed  
18 signatures later because we have enough money in our own  
19 accounts to cover the transaction."

20 He said, "As long as you sign and guarantee,  
21 you can walk out with the check."

22 So we signed an additional document on a yellow  
23 pad saying we guaranteed the monies the bank put out  
24 even though the transaction was not completed in the paper-  
25 work.



2 Q Do you know who was buying the 14,900  
3 shares?

4 MR. GOULD: I object to that.

5 THE COURT: I am going to sustain that. We are  
6 right in the middle of a conversation, Mr. Sorkin and  
7 for that simple reason alone I suggest we exhaust the  
8 conversation. It is very hard to follow.

9 Q Was anything else said at this conversation?

10 A Yes. I instructed Mr. Herbert to put my 4,900  
11 shares into my coded account, Gypsy. Mr. Stoller instructed  
12 Mr. Herbert to put his 5,000 shares into his account,  
13 Shirley, and he instructed him to put the 5,000 shares of  
14 Mr. Allen's into Allen's secret account, Erika.

15 Q Did Mr. Herbert give you anything?

16 A He gave me a check for \$48,000 some odd dollars,  
17 and he gave me some receipts and a confirmation of the  
18 transaction, all made out to me at my home address in the  
19 USA.

20 Q I am going to show you now what has previously  
21 been marked Government's Exhibits 11, 12 and 13 for  
22 identification.

23 Would you please look at them in order, 11 first,  
24 and tell us, please, what each of these documents -- what  
25 these documents are, if you can -- just identify the

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documents, please?

A These are the documents I just spoke to you about.

Q What is No. 11?

A 11 is a receipt naming my nominees, Osborn, Strauch, Recca, Howe and Bundy for their amount of shares, equalling 4,900.

Document 13 is a confirmation of the sale --

MR. GOULD: If your Honor please, I don't know how to deal with this treatment of document. It just happened again.

THE COURT: You remember we had this come up before and you are not getting much help from Mr. Sorkin, perhaps, but I went into this with you.

11 is a receipt issued by some institution.

THE WITNESS: Bank Hofmann, yes.

THE COURT: What is 12?

THE WITNESS: Confirmation.

THE COURT: And 13?

THE WITNESS: It looks like a confirmation, also, a duplicate confirmation.

THE COURT: Next question, Mr. Sorkin.

Q Did Mr. Herbert give you these?

A Yes.

Q While you were in Switzerland?

1  
2 A Yes.

3 MR. SORKIN: Your Honor, we offer Government's  
4 Exhibit 11, 12 and 13 in evidence. I am showing them to  
5 counsel.

6 MR. GOULD: Your Honor, may I make a suggestion  
7 to counsel?

8 (Counsel confer off the record.)

9 Q Mr. D'Onofrio, did you get originals or photostats?

10 A I don't recall. I think I got originals, but  
11 I don't recall whether I got originals or photostats.

12 (Pause.)

13 MR. GOULD: I object to them on the ground  
14 that no foundation has been laid for the documents.

15 Q Do you know where the originals are of these  
16 documents?

17 A I don't know where the originals are.

18 MR. SORKIN: We offer them in evidence.

19 MR. GOULD: I stand on the objection, your Honor.  
20 I want to know what these were made for.

21 THE COURT: May I see them?

22 MR. SORKIN: Yes, your Honor.

23 (Handing.)

24 MR. GOULD: I direct your Honor's attention to  
25 the clipping on each one of those in the upper left-hand

corner.

MR. SORKIN: Your Honor, since Mr. Gould has directed the Court's attention --

MR. GOULD: I didn't invite a discussion of it, your Honor.

THE COURT: It is plain enough to me. The defense is entitled to make this objection, Mr. Sorkin, and I am entitled to sustain it, on the present record.

Q Was it your practice to receive duplicates as well as originals from the bank?

MR. GOULD: Objection.

MR. FELDSHUH: Objection.

THE COURT: Sustained.

Q Did you receive these from the bank?

MR. FELDSHUH: Objection. Already asked and answered, your Honor, and he said he didn't know.

MR. SORKIN: I will rephrase the question, your Honor.

Q Looking at Government's Exhibit 11, 12 and 13, are these identical copies to the originals that you received from the bank?

MR. FELDSHUH: Objection.

MR. GOULD: Objection.

THE COURT: Let's go back.

2 Have you ever seen these actual pieces of paper  
3 before?

4 THE WITNESS: Absolutely, your Honor.

5 THE COURT: I don't mean something that is a  
6 copy, I mean these actual pieces of paper. Do you see the  
7 distinction?

8 THE WITNESS: These three pieces of paper?

9 THE COURT: That's right.

10 THE WITNESS: Yes. These three I turned over to  
11 the United States Government.

12 THE COURT: You turned these actual copies over --

13 THE WITNESS: They may have made duplicates of these  
14 after I turned them over, but I turned these copies over.

15 THE COURT: These copies you are now showing in your  
16 hand?

17 THE WITNESS: That is to the best of my knowledge.  
18 I don't know if the Government made another copy.

19 THE COURT: I am not asking that. I am trying  
20 to find out, and I want to make sure you understand me,  
21 in this day of duplicating and reproducing a zillion  
22 pieces of paper per minute, I recognize I may have confused  
23 you, but all I am asking is, physically, are these the  
24 same pieces of paper that you turned over or are you  
25 telling us that these are copies?

THE WITNESS: These are what I turned over to the United States Government, these are the documents.

MR. GOULD: Could I ask a couple of questions, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q Do you know those are the documents?

A I recall them as being the documents.

Q You can tell this is a Xerox that you had made?

A No, I cannot tell it is a Xerox I made or that the bank made.

Q The bank gave you an original?

A I said I didn't recall whether they gave me an original or duplicate.

Q How do you know this is the duplicate the bank gave you?

A I have no way of knowing it is a duplicate the bank gave me but that is what I turned over to the Government.

Q How do you know it is a duplicate you had made and turned over to the Government? Did you look at the watermark?

A No.

1  
2 Q Are you ready to swear you had this copy made  
3 and handed over to the Government?

4 A Not that I had it made. My office girl may have  
5 had it made or a third party. I may have had it made  
6 over there. I did not look at the watermark but I am  
7 willing and ready to swear I turned these documents over  
8 to the Government.

9 Q These pieces of paper, not copies --

10 MR. SORKIN: Your Honor, it has been asked and  
11 answered over and over again.

12 THE COURT: Go ahead.  
13  
14  
15  
16  
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2 BY MR. GOULD:

3 Q I want to know whether you are ready to testify  
4 here now that of your own knowledge, under oath, these  
5 are the three pieces of paper that you turned over to the  
6 United States Government?

7 A If the United States Government didn't substitute  
8 them, those are the three pieces of paper.

9 Q Then you don't know whether these are the three  
10 papers or they are not the three papers?

11 A Those are the three that I turned over to them.

12 Q That is your testimony?

13 A That is my testimony.

14 Q And how is there anything about these papers that  
15 enables you to identify them as being the three papers that  
16 you turned over?

17 MR. SORKIN: Mr. Gould, may I just have one?

18 I think I --

19 MR. GOULD: If you don't mind, Mr. Sorkin.

20 MR. SORKIN: I think I gave the wrong document,  
21 your Honor. I would like to check. Your Honor, I think  
22 I can expedite this. If Mr. Gould will just look under the  
23 exhibit tag, we can expedite this.

24 MR. GOULD: Your Honor, I must object to this.

25 THE COURT: That may be so. You will have your



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1 turn. He is examining, Mr.Sorkin.

2 MR. SORKIN: Yes, your Honor.

3 Q Now, sir, I just want to know from you whether  
4 there is something about these three pieces of paper so that  
5 you testifying here today know that these are in deed the  
6 three pieces of paper that you turned over to the Government?  
7

8 A I toldyou unless they were substituted by the  
9 Government, then I cannot. But these look to me like the  
10 three pieces of paper.

11 Q But you really don't know, do you?

12 A If you ask me to swear under perjury, I would have  
13 to take the easy way out and say I couldn't swear under  
14 perjury.

15 Q But you know that you are swearing here today?

16 A Yes, but I can't swear to those documents because  
17 other people had them after me, the U. S. Government.

18 Q Didn't you tell his Honor before I took you  
19 on examination that you were sure that these were the three  
20 pieces of paper that you turned over to the United States  
21 Government?

22 A Unless they substituted them with other photo-  
23 copies or other documents.

24 Q So there is nothing about these three pieces of  
25 paper from which you are able today to tell us that these

1 gab-3 D'Onofrio-direct  
2 are the three pieces of paper that you turned over?

3 A No, Mr. Gould.

4 Q All right.

5 MR. GOULD: I stand on the objection here.

6 BY MR. SORKIN:

7 Q Mr. D'Onofrio, would you look at Government  
8 Exhibit No. 12. Underneath the tag, do you recall that  
9 being marked, turning that over to Mr. David Brodsky in the  
10 grand jury and him marking it in front of you in the grand  
11 jury?

12 MR. FELDSHUH: Objection, if it please the Court.  
13 The most leading question I have heard today.

14 THE COURT: I think it has to be leading. I  
15 will allow it. He wants to know --

16 A Yes, that's the one I gave Mr. Brodsky -- that's  
17 the one I gave Mr. Brodsky.

18 Q Was that marked in your presence by Mr. Brodsky?

19 A I believe a court stenographer marked it and Mr.  
20 Brodsky.

21 Q In the grand jury?

22 A Yes.

23 MR. GOULD: Let's have them back.

24 MR. SORKIN: Just a moment, Mr. Gould.

25 MR. GOULD: I am entitled to look at them.

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2 Q Mr.D'Onofrio, do you recall turning this over to  
3 Mr. Brodsky also in the grand jury?

4 A Yes, I did.

5 MR. SORKIN: Your Honor, we offer these exhibits  
6 again.

7 Here you go, Mr. Gould.

8 VOIR DIRE EXAMINATION

9 BY MR. GOULD:

10 Q You say, Mr.D'Onofrio, that you remember that these  
11 marks, GX13 for identification, GX11, GX12, that they  
12 were marked in your presence in the grand jury?

13 A I didn't say that.

14 Q I thought you did say that.

15 MR. SORKIN: I said 12, your Honor.

16 MR. GOULD: Just 12?

17 MR. SORKIN: That's what I said.

18 Q Not the others?

19 A Not the others.

20 Q Excuse me. You remember the 12 was marked in  
21 the grand jury?

22 A I remember the court stenographer marking it.

23 Q Marking something?

24 A Marking the documents I was giving him.

25 Q I see. We will leave aside 11 and 13. You are

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2 not contening they were marked in the grand jury?

3 MR. SORKIN: I am not sure, your Honor.

4 Q Let's stay with 12. You do remember 12 was  
5 marked in the grand, jury, don't you?

6 A I recall it as being marked.

7 Q What is 12 that you recall being marked in the  
8 grand jury?

9 A I don't recall, Mr. Gould.

10 Q You remember these three documents. You said so.

11 A I believe it was a confirmation slip, but I am not  
12 sure.

13 Q You remember that one of them was marked in the  
14 grand jury, you say, right?

15 A Yes, I believe it was a confirmation.

16 Q And not the other?

17 A I don't recall the others.

18 Q I see. The others that you don't recall, I think  
19 my friend here will agree are 11 and 13, right?

20 MR. SORKIN: That's correct.

21 Q So it is 12 we are concerned about, 12 in this  
22 case. Here.

23 A I see.

24 Q Now, sir, how do you distinguish between 12 on the  
25 one hand, which you do recall, and 11 and 13, which you  
don't recall?

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2 A Only when you show it to me. I can't distinguish  
3 it in your hands.

4 Q You told Mr. Sorkin you remembered --

5 A It was a confirmation slip, a duplicate confirma-  
6 tion slip.

7 Q Of what, of stock?

8 A Stock and a dollar amount after it.

9 Q Stock and a dollar amount?

10 A 4900 shares of stock and \$48,000-some odd.

11 Q You remember it because it says 4900 shares of  
12 stock?

13 A I don't remember it for that reason, no.

14 Q Tell us how you remember it. That is what his  
15 Honor wants to know.

16 A How I remember it?

17 Q Yes.

18 A I just think it is a very difficult question to  
19 answer you, Mr. Gould. How does a person remember? I just  
20 remember.

21 Q You remember this one, but you don't remember  
22 these two?

23 A I don't recall those at the grand jury.

24 Q I want to know what it is about this one that  
25 makes you remember it?

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2 A It is marked grand jury exhibit.

3 Q It is?

4 A Isn't it?

5 Q That's how you remembered it?

6 A No, I didn't say that's how I remembered. I just  
7 said it is.

8 Q It is marked the same as the other two that you  
9 don't remember, isn't it?

10 A No, it is not.

11 Q It is not? Show me how it is marked differently  
12 from the other two. Don't look at them, just look --

13 A Why can't I look at them?

14 Q I am sorry, Mr. D'Onofrio. I just want you to  
15 look at the markings, take the one that you remember on  
16 G12, that's the marking.

17 A Is that the one that I told --

18 Q That is the one you remember. What does it say  
19 there?

20 A It says "U.S. grand jury, July 10th."

21 Q That is how you remember that?

22 A That is my best recollection.

23 Q That is how you remember it.

24 MR. SORKIN: Your Honor, if the Court wishes, we  
25 have one other witness who we can call, Mr. Brodsky, who

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2 can identify these records as having been received.

3 MR. GOULD: Speaking for myself, your Honor, I am  
4 going to withdraw the objection at this point. I am satis-  
5 fied.

6 THE COURT: He is withdrawing his objection, Mr.  
7 Sorkin. Let's give Mr. Feldshuh a chance to say whether he  
8 objects.

9 MR. FELDSHUH: Can I see these for a moment, your  
10 Honor?

11 THE COURT: That is what I am seeking to have you  
12 do, sir.

13 While you are doing that, the jury and I will  
14 take the afternoon recess. About five minutes, ladies and  
15 gentlemen.

16 (Recess.)

17 (In open court; jury present.)

18 THE COURT: All right, Mr. Feldshuh.

19 MR. FELDSHUH: May I have a moment at the side,  
20 bar, your Honor, with counsel with regard to these exhibits?

21 THE COURT: All right.

22 (At the side bar.)

23 MR. FELDSHUH: Your Honor, I am withdrawing my  
24 objection to Exhibit 12. I am standing on my objection with  
25 regard to 11 and 13. I also asked Mr. Sorkin to remove

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2 these slips which are not being offered at this time and on  
3 which exhibit he has declined so to do.

4 THE COURT: You mean on 12?

5 MR. FELDSHUH: This FBI business.

6 THE COURT: They shouldn't be part of the exhibit.

7 MR. SORKIN: They will not be part of the exhibit,  
8 your Honor. I do not intend to show it to the jury. That  
9 is the only way, should the Government find it necessary  
10 to call the FBI agent, that he can identify the particular  
11 exhibit by putting a tag on it.

12 If we --

13 THE COURT: All right.

14 MR. SORKIN: I assure the Court that if I show  
15 it to the jury, I will pull that tag off.

16 THE COURT: All right. On that basis 12 will  
17 be received.

18 You press your objection to No. 11?

19 MR. FELDSHUH: 11 and 13.

20 THE COURT: At the moment I will sustain that. I  
21 think the Government should have had itself prepared a little  
22 better for this problem. I will sustain that.

23 MR. SORKIN: Your Honor, I point out to the  
24 Court that the Government then intends to call Mr. David  
25 Brodsky, who put his initials on each of these.



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1 gab-10 D;Onofrio-direct  
2 THE COURT: Fine. You can do whatever you want.  
3 At this moment he is entitled to object.

4 (In open court.)

5 THE COURT: As I understand it, neither defense  
6 counsel objects to No. 12?

7 MR. FELDSHUH: That is correct.

8 MR. GOULD: I don't object to 11 or 13.

9 THE COURT: All right. Mr.Feldshuh?

10 I am going to then indicate to the jury that 11  
11 and 12 and 13 are received as to the defendant Stoller, he  
12 not objecting now. However, the picture is a little  
13 different at least at the present time so far as the defendant  
14 Frank is concerned, ladies and gentlemen, and only 12 will  
15 be received as to him subject, of course, to that little  
16 warning about certain things that not be shown.

17 MR. SORKIN: That is correct, your Honor.

18 May we go ahead.

19 (Government Exhibits 11, 12 and 13 were received  
20 in evidence.)

21 BY MR. SORKIN:

22 MR. SORKIN: Your Honor, may I just read parts  
23 of these exhibits to the jury?

24 THE COURT: Yes.

25 (Mr.Sorkin read from Government Exhibit 13 in

xxx

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2 evidence to the jury;

3 Mr. Sorkin read from Government Exhibit 12 in  
4 evidence to the jury;

5 Mr. Sorkin read from Government Exhibit 11 in  
6 evidence to the jury.)

7 Q Mr.D'Onofrio, whose signature is this on Government  
8 Exhibits 13 and 12?

9 A Mr. Herbert's, and I don't know the other bank's  
10 signatur e.

11 Q Mr.D'Onofrio, did you receive a check for that  
12 amount, \$48,583.50?

13 A Yes.

14 Q Drawn on whose account?

15 A Drawn -- you mean what bank, sir?

16 Q Yes, sir.

17 A I don't recall whether it was Irving Trust or  
18 Morgan Guaranty.

19 Q I am sorry. My question was, against whose  
20 account was it drawn?

21 A It was drawn against my account, Gypsy.

22 Q Did Mr.Stoller receive such a check?

23 A Yes.

24 MR. GOULD: Objection.

25 MR. FELDSHUH: Objection.

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2 THE WITNESS: I am sorry, your Honor.

3 THE COURT: That is all right. I am going to sus-  
4 tain the objection because it is susceptible of several  
5 understandings.

6 MR. SORKIN: I will rephrase it, your Honor.

7 Q Mr.D'Onofrio, did you see Mr. Herbert give Mr.  
8 Stoller anything while you were in Switzerland?

9 A Yes.

10 Q What did you see him give him?

11 A Documents similar --

12 MR. GOULD: No, no.

13 MR. SORKIN: Is there an objection?

14 MR. GOULD: Yes, there is an objection. I  
15 don't know how we can keep the man from talking when I am  
16 objecting. I am trying to prevent him from doing what he  
17 did before, which is to volunteer something beyond what he  
18 is permitted to say.

19 THE COURT: Generically speaking, what did you  
20 see handed over by Herbert or Ballmer to Mr.Stoller, if any-  
21 thing?

22 THE WITNESS: The same set of documents that  
23 the Government exhibited here that you just saw and a check.

24 THE COURT: You mean by that confirmation receipt  
25 and a check?

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2 THE WITNESS: Yes, and a check.

3 THE COURT: All right, next question.

4 Q Did Mr. Herbert give anything else to Mr. Stoller?

5 A He gave him back Mr. Allen's stock certificates  
6 because they were improperly guaranteed.

7 Q Mr. D'Onofrio, did Mr. Herbert give Mr. Stoller  
8 any receipts other than the ones you just testified to?

9 A He gave Mr. Allen's receipts.

10 Q Did you see those receipts?

11 A Yes.

12 Q Were they originals or duplicates, to the best  
13 of your recollection?

14 A To the best of my recollection, they were duplicates.

15 MR. SORKIN: May I have just a moment, your  
16 Honor?

17 (Pause.)

18 Q Mr. D'Onofrio, let me show you now what has pre-  
19 viously been marked as Government Exhibits 33, 34 and 35.

20 Would you look at these documents, please, and can  
21 you identify them for us?

22 A Yes.

23 Q Just take them in order, Mr. D'Onofrio. First  
24 one 33, generically, what is it?

25 A Generically it is a receipt of the individuals --

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2 MR. GOULD: I object to this, your Honor. Gener-  
3 ically it is a piece of paper.

4 THE WITNESS: It is a receipt.

5 THE COURT: It is a receipt, all right.

6 THE WITNESS: It is a receipt.

7 Q What is the next one, Mr. D'Onofrio?

8 A A confirmation receipt.

9 Q And the next one?

10 A Similar, a confirmation receipt and the check.

11 Q Have you ever seen those documents before?

12 A Yes.

13 Q Where did you see them?

14 A In Switzerland.

15 Q Where did you see them?

16 A In Bank Hofmann in Switzerland.

17 Q Who had them?

18 A Mr.Stoller had them to return to Mr. Allen.

19 Q Was there a conversation between Mr. Herbert and  
20 Mr.Stoller and yourself?

21 A Yes.

22 Q What, if anything, did Mr. Herbert say?

23 A Mr. Herbert said he will give Mr.Stoller the  
24 receipts and the check for Mr. Allen, but to make darn sure  
25 that we returned with the proper signature guarantees on the

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2 checks.

3 Q Did you see Mr. Herbert give these to Mr. --

4 MR. GOULD: He just said that.

5 THE COURT: Yes.

6 MR. SORKIN: We offer these in evidence, your Honor.

7 MR. GOULD: I suppose I have to ask him some  
8 questions on voir dire.

9 THE COURT: All right.

10 VOIR DIRE EXAMINATION

11 BY MR. GOULD:

12 Q You mean Herbert gave Stoller Xerox or photostat  
13 copies?

14 A I am not sure whether he gave him originals or  
15 duplicates, just as my own, Mr. Gould.

16 MR. FELDSHUH: Keep your voice up, please.

17 THE WITNESS: I am sorry.

18 Q These are not originals, are they?

19 A No, they are not.

20 Q You can see these are pictures, either Xerox or  
21 photostats, some process, right?

22 A Yes.

23 Q You don't remember whether he got process papers  
24 or original papers?

25 A No, I do not remember.

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2 Q So you don't know whether these are the papers  
3 he gave him or not?

4 A Those precise pieces of paper?

5 Q That's right.

6 A I could not swear to it.

7 MR. GOULD: I will object to them, no proper  
8 foundation.

9 MR. FLEDISH: Same objection, your Honor.

10 THE COURT: All right. These are Exhibits 33, 34  
11 and 35. Both defendants are objecting on the basis of  
12 the Best Evidence Rule, etc., and perforce on this state on  
13 this state of the record those objections will be sustained  
14 without prejudice to the renewal of the offer on a better  
15 record.

16 BY MR. SORKIN:

17 Q Mr. D'Onofrio, did there come a time when you  
18 returned from Switzerland after this meeting?

19 A Yes.

20 Q Did you have a conversation on your return with  
21 Mr. Stoller and Mr. Allen?

22 A Yes.

23 Q Where was this conversation held?

24 A We had a conversation -- just to recall now, I  
25 believe at their office on East 60th Street.

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D'Onofrio-direct

2 Q Approximately when was this?

3 A Well, it has to be after this day. I am going  
4 to say the end of March 1969.

5 Q Who else was present other than Mr. Stoller --

6 A Just the three of us.

7 Q Did you have a conversation?

8 A Yes.

9 Q Tell us please what each of you said.

10 A The first one that I recall saying anything was  
11 Mr. Allen, and he said that he wanted to point out to me  
12 that the stock was now at about 45 or \$50 a share, and we  
13 had only opened it, you know, at \$7 a few weeks earlier,  
14 and that he thought in the best interests of the three of us,  
15 Mr. Stoller, Mr. Allen and myself, we should get out of it  
16 and cross it over to Muir Weissinger and Bonavia now.

17 Mr. Stoller said he agreed with Mr. Allen and that  
18 it would be better to make a quick buck that is sure than  
19 wait, God forbid anything happened, and I agreed with both  
20 of them, we should cross the stock and sell it overseas,  
21 and that was the substance of the conversation.

22 Q Mr. D'Onofrio, what did you understand the  
23 term "cross" to mean?

24 A Cross in the meaning that I am using it means that  
25 we will sell it to two other secret Swiss bank clients



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2 without it ever appearing in the United States on a document  
3 in any way, shape or form, in the bank as a paper trans-  
4 action, other than later be transferred into street name  
5 of a New York member firm.

6 Q Mr. D'Onofrio, at this meeting did anyone call  
7 Mr. Herbert on the phone?

8 A Mr. Stoller did.

9 Q Did you overhear the conversation?

10 A I was on the phone with Mr. Stoller. They had  
11 two phones in the apartment.

12 End 3 PM

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2 Q Tell us, please, what Mr. Stoller said and  
3 what Mr. Herbert said.

4 A Mr. Stoller said to Mr. Herbert, "We decided to  
5 make the cross, Freddie," and Freddie said, "That's good.  
6 The stock is about 40 or 42 today. Just remember that when yo  
7 make the cross that the pink sheets indicate on that day --  
8 must indicate the price otherwise the bank can't transfer  
9 it to Pompeii and Barbin unless they have a pink sheet  
10 quotation of the price. So if you want to cross it at 48 or 4  
11 or 50, you better make sure when you come over that on that  
12 day the pink sheets reflect the price of the stock that day  
13 you are going to cross it."

14 MR. GOULD: Can we get the witness to repeat who  
15 is supposed to have said that, your Honor?

16 THE WITNESS: Mr. Herbert said this to Mr.  
17 Stoller and to myself on the telephone on East 60th Street.

18 Q Did Mr. Stoller say anything?

19 A He said we would have the price at the proper spot  
20 and he would tell him the day of the cross, which should  
21 be soon.

22 Q Do you know what the pink sheets are?

23 A Yes.

24 Q Would you tell us, please?

25 A Pink sheets are a form by the National Quotations

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1 Bureau, that is rather thick, and it lists all over-the-  
2 counter securities plus some listed on the American and  
3 New York Stock Exchange, but mostly over-the-counter securi-  
4 ties not listed in the daily newspapers.  
5

6 They are listed every day and it lists the price  
7 the various brokers are trading the securities at, who the  
8 brokers are that are in the sheets, with the telephone  
9 numbers of the brokers, and the bid, meaning what the broker  
10 will pay for that stock that day, and the asking price,  
11 what he would sell it for if anyone wanted to buy it.

12 Q When was the next time after this phone conversa-  
13 tion that you went to Switzerland?

14 A I would have to say within the next three, four,  
15 five days.

16 Q Did you go over with anyone?

17 A Mr. Stoller.

18 Q Did you meet Mr. Herbert there?

19 A Yes.

20 Q Did you have a conversation with him?

21 A Yes.

22 Q What was the conversation?

23 A I met with Mr. Herbert at Bank Hofmann, with Mr.  
24 Stoller and we told him we were ready to cross and Mr.  
25 Herbert got on the telephone and checked with one of the

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2 major brokerage houses to see what the current quotation  
3 was. I don't recall if it was 48, 49 or 50, but it was  
4 in that range. Mr. Herbert arranged the paper work that  
5 created the cross from Gypsy to Barbin and Pompeii and from  
6 Shirley to Barbin and Pompeii, and from Erika to Barbin and  
7 Pompeii.

8 Q Did he prepare this paper work in your presence?

9 A Most of it, yes, but a typist did it outside  
10 of the room.

11 Q How much stock was crossed from Gypsy, Shirley and  
12 Erika to Pompeii and Barbin?

13 A About 18,000 and a fraction shares.

14 Q How much stock was brought over by you and Mr.  
15 Stoller from your original nominees?

16 A 14,900 shares.

17 Q Where did the additional stock come from, if you  
18 know?

19 A As per our previous conversation, we had bought  
20 it in the open market --

21 Q Who is "we"?

22 A Phil, Jerry and myself, equally bought it via  
23 Phil's instructions to Mr. Herbert and my instructions to  
24 Mr. Herbert.

25 Q Of the approximately 18,000 shares, how many went

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2 to Mr. Bonavia, how many to Mr. Weissinger?

3 A Exactly equal, if I recall, 18,200, I think it  
4 was, and we gave them 9100 apiece, or it was 18 four, and we  
5 gave them 9200 apiece.

6 Q What was the cost to Mr. Bonavia and Mr.  
7 Weissinger if you know?

8 A Almost half a million dollars apiece. If you let  
9 me reflect a second -- about \$450,000 each.

10 Q After the cross was made, did you have a conversa-  
11 tion with Mr. Stoller in Switzerland?

12 A Yes.

13 Q What did he say, if anything, to you and what did  
14 you say to him, if anything?

15 A Mr. Stoller and I conversed and he asked me what I  
16 was going to do with my new-found profits, and I told him  
17 I had intentions of buying some gold and he told me that  
18 he was a little bit shaky, that he had a little bit too much  
19 money now there at Bank Hofmann and he asked me how much  
20 money I had there at Bank Hofmann, and I said, "Phil, over  
21 the last few deals, I have about six or \$700,000."

22 He said, "Well, I am nearing the million dollar  
23 mark and one of the things I am concerned about -- there are  
24 a couple of things, but one is God forbid Bank Hofmann goes  
25 broke, where is my million dollars, and I would like to get

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D'Onofrio-direct

2 some of our money out of Bank Hofmann. Jerry has a little  
3 less than you, Ray, he has been spending a lot of money  
4 and one of the things I want you to do when you get back is  
5 talk to Jerry and cut down on his spending, because his  
6 needs expand as he spends. He is not as tight" --as  
7 Phil and myself.

8 I promised I would talk to him.

9 Then Phil said, "I want to take you to another  
10 bank and I would like you to talk to Fred Herbert, because  
11 if we start pulling money out of Bank Hofmann, Freddie is  
12 going to get a little upset, because Freddie feels like he  
13 owns the money even though it is our accounts. I would like  
14 you to tell Freddie you are going to do a metal transaction  
15 and I will introduce you to a bank, Nord Finance Bank, and  
16 we will all open accounts there under the same code names,"  
17 -- at this time the Liechtenstein code names, because our  
18 names had been changed, because I am now Muriel Anstalt and  
19 Phil is Fleetwood and Jerry is Drummer, and --

20 MR. GOULD: I move to strike this out, your  
21 Honor.

22 First of all, I don't think we are getting  
23 anything that has any bearing on this case and --

24 THE COURT: I didn't understand the question called  
25 for this, and on that basis I sustain your objection. The

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2 question called for this and on that basis I sustain your  
3 objection. The jury will disregard all this and we will  
4 give you a chance to start over, Mr. Sorkin.

5 Q During the course of this conversation was the  
6 name Swiss Bank Corporation mentioned?

7 A Yes. Phil said he was going to open one of  
8 his accounts at Swiss Bank Corporation and the others were  
9 opening at Nord Finance Bank.

10 MR. GOULD: I object again, your Honor, on the  
11 grounds that we are dealing with something that is apparently  
12 irrelevant and immaterial.

13 MR. SORKIN: May I be heard on that, your Honor?

14 THE COURT: I am going to take this subject to  
15 connection, meaning here, I don't understand from my recollec-  
16 tion of the indictment that this is terribly important --

17 MR. SORKIN: It is the second indictment, your  
18 Honor, it has relevance to that.

19 MR. GOULD: Which indictment? May I be guided  
20 on that by my learned friend?

21 THE COURT: The second indictment is a bit mislead-  
22 ing. Which indictment do you mean?

23 MR. SORKIN: The three-count indictment, your  
24 Honor.

25 THE COURT: Most recently filed?

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D'Onofrio-direct

2 MR. SORKIN: Yes, your Honor.

3 THE COURT: I will take it subject to that and  
4 if it turns out to be wrong, we will strike it.

5 Q During the course of this conversation was a  
6 bank called the Swiss Credit Corporation Bank also mentioned?

7 A He told me he was going to put most of his money  
8 in Swiss Bank Corporation or Credit Swiss, but certainly not  
9 leave it with one of the smaller private banks.

10 Q Was there further conversation?

11 A Yes, that he was going to buy silver bullion,  
12 not on margin, in a pure state and keep all his money in  
13 silver bullion in a bank where he can feel it and touch it  
14 and see it.

15 MR. GOULD: I renew the objection, your Honor.  
16 I just looked at the other indictment --

17 THE COURT: I know what you are going to say.

18 MR. GOULD: I will not say it, since you know,  
19 your Honor.

20 THE COURT: You are quite literally to be under-  
21 stood in that regard. I don't blame you. I will take  
22 this more or less on faith, but if it turns out to be wrong,  
23 I am going to strike it, with emphasis.

24 MR. GOULD: The problem, your Honor, is that  
25 it may reach the point where it is prejudicial and I don't



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2 know what this man is going to say next.

3 THE COURT: I tell you what I will ask Mr. Sorkin  
4 to do, I will ask him to make an offer of proof out of the  
5 hearing of the jury.

6 Would you like that?

7 MR. GOULD: Yes, your Honor.

8 THE COURT: Come up to the side bar.

9 (At the side bar.)

10 THE COURT: Mr. Sorkin, would you enlighten us  
11 by giving us an offer of proof?

12 MR. SORKIN: Yes, your Honor, with respect to  
13 Swiss Bank Corporation, the first count of the second  
14 indictment charges Mr. Stoller with paying off Mr. Allen.  
15 There will be evidence in this case that the moneys that Mr  
16 Stoller used to pay off Mr. Allen came from Swiss Bank  
17 Corporation. There will be additional testimony, your  
18 Honor, from another witness that Mr. -- additional documents  
19 that Mr. Stoller had moved his money to Swiss Bank Corporation  
20 in anticipation of possible problems with the Government,  
21 and I think that pretty much covers it -- moneys that  
22 were used to pay off Mr. Allen came from Swiss Bank Corpora-  
23 tion.

24 THE COURT: That is Count 1 of the latest filed  
25 indictment?

2 MR. SORKIN: Yes.

3 MR. GOULD: What does that have to do with this?  
4 It is clear they offered money to Allen while Allen was  
5 a fugitive for the purpose of influencing him not to  
6 return to testify about a Swiss bank investigation, it says  
7 here. This has nothing to do with that. If he wants to  
8 prove as to what was said to Allen --

9 THE COURT: I think the reason he is offering  
10 this is to show that there was the money with which to do  
11 this.

12 MR. GOULD: They don't say he paid it to him out  
13 of a Swiss bank.

14 THE COURT: I understand that, but I think in  
15 order to buttress their case under Count 1 of the latest  
16 filed indictment it would be probative to show the man  
17 did have the money in an institution such as --

18 MR. GOULD: He could show a bank account in  
19 Switzerland or get this fellow to say he told him he had  
20 the money in a Swiss bank, which is far from what he is  
21 doing.

22 I wouldn't object to that, but what he has done  
23 here, he is getting a long discursive conversation and  
24 it is the flavor he wants, not the substance. He is not  
25 fooling you and not fooling me.

2 MR. SORKIN: If Mr. Stoller made an admission  
3 to Mr. D'Onofrio he is going to move his monies from --

4 THE COURT: You say from that you are going  
5 to next prove the money he attempted to offer or did  
6 offer, or whatever happened, came from the Swiss bank --

7 MR. SORKIN: Swiss Bank or Credit Swiss, your  
8 Honor.

9 THE COURT: Well, which?

10 MR. SORKIN: Swiss Bank Corporation, but not  
11 through this witness. There will be other witnesses.

12 MR. GOULD: I can understand that your Honor  
13 would take that subject to a witness coming, but that is  
14 all.

15 THE COURT: That is all.

16 (In open court.)

17 THE COURT: The ruling, I thought, was clear,  
18 and the ruling is I will take this testimony as to the  
19 conversation about transferring funds to Swiss Bank,  
20 and that's all, and any other institutions, ladies and  
21 gentlemen, in this last answer, we will just disregard.

22 Is there any further direct that you want to  
23 indulge in with this witness?

24 MR. SORKIN: Oh, yes, your Honor.

25 May I have the last question read back, your

Honor?

THE COURT: My recollection is that Mr. D'Onofrio said that Stoller said he was going to buy silver bullion so he could have it where he could look at it and feel it, is that right?

THE WITNESS: Yes, your Honor.

BY MR. SORKIN:

Q Mr. D'Onofrio, have you ever heard of a man named Mel Schneiderman?

A Yes.

Q Did his name come up in conversation with Mr. Stoller?

A Yes.

Q When was this?

A At the opening of the stock. So it is going to be in February, late February of 1969, or thereabouts.

Q Who else was present?

A Mr. Allen, Mr. Arden, their office clerk, and Phil spoke to him by telephone daily, and I was there many times, so it is hard to refer to a specific conversation --

THE COURT: Wait a minute. I don't know about anybody else, but you and Mr. Sorkin certainly confuse me.

Apparently in early or late February, I don't

which, you are in somebody's office.

THE WITNESS: Mr. Allen's office.

THE COURT: The East 60th Street apartment?

THE WITNESS: Yes, sir.

THE COURT: There is a man named Mel who is there or on the end of a phone wire somewhere -- what is it.

THE WITNESS: Mr. Schneiderman is a broker from E. F. Henderson & Company.

THE COURT: Was he there in the East 60th Street office?

THE WITNESS: No, your Honor, it was by telephone.

THE COURT: Who was present in the apartment?

THE WITNESS: Mr. Arden, who works for Mr. Stoller and Mr. Allen, Mr. Allen and Mr. Stoller and myself.

THE COURT: All right.

Q Did his name come up in any conversation with Mr. Stoller?

A Yes.

Q What did Mr. Stoller say?

A Mr. Stoller called Mel and asked him how the stock was coming along --

MR. GOULD: Your Honor, I have to object on formal grounds.

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THE COURT: I am inclined to agree, Mr. Sorkin.

Q Did Mr. Stoller mention --

THE COURT: He is objecting to the conversation.

MR. SORKIN: I am trying to ask whether Mr.

Stoller mentioned him outside of the phone --

Q To you, Mr. D'Onofrio --

THE COURT: Will you start over again? This is about as confusing --

Q Did you ever have a conversation with Mr. Stoller where the name of Mel Schneiderman came up in the conversation?

A Yes.

MR. GOULD: When, where, who was present?

THE WITNESS: On East 60th Street, around mid-March or late February of 1969, Mr. Arden was present, Mr. Allen was present, Mr. Stoller was present, and I was present, and Mr. -- I don't know whether he is objecting or not -- and Mr. Stoller had asked me if I had gotten anyone else to go into the pink sheets. We had received a request from Mr. Herbert.

Mr. Herbert called us at the apartment and said that the bank wants more people in the pink sheets making a market, more substantial people, that their broker-dealer Emanuel Deetjen, was not satisfied with the number

of dealers --

MR. GOULD: If your Honor please, I have to object and move to strike.

THE COURT: That is sustained. Mr. Sorkin, really, I am going to put this to you: You have to help us more on this. You, Mr. D'Onofrio, have got to keep in mind that you confine yourself only to what you are asked.

Apparently, as I understand it so far, within relevance, permissible terms, so far as our rules are concerned, you, Allen, Stoller and this man Joe Arden are sitting around the East 60th Street office and apartment.

THE WITNESS: That is correct, your Honor.

THE COURT: You say you recall Stoller mentioning the name of one Mel Schneiderman.

THE WITNESS: That is correct.

THE COURT: Would you put a question?

Q What if anything did he say?

A He said he got Mel Schneiderman, representing Henderson Securities, or E. F. Henderson, I am not sure of the name, to go into the pink sheets and he asked if I had gotten anyone to go in and I said, "Yes, Baer, Wald & DeBoer and Am-Swiss International and I am working on some

others," and he says, "I am working on some others."

Q Did there come a time when you received a telephone call from Mr. Stoller?

A Yes.

Q When was that?

A April of 1969 -- I believe April, early April of 1969.

Q Did you have a conversation with Mr. Stoller on the telephone?

A Yes. Mr. Stoller told me he had just received a phone call from Mr. Herbert.

MR. SORKIN: If your Honor wishes to break now, this would be a very convenient time. I am moving into a new area. I understood you were going to 4:00 --

THE COURT: I have another case at 4:00 --

MR. GOULD: Could we just get the conversation, your Honor?

Q Tell us what Mr. Stoller said and what you said to him?

A Mr. Stoller told me Mr. Herbert called him and said that the trade we had made in the cross was going to be reverted back into our own accounts and that Emanuel Deetjen, representing Bank Hofmann, would not transfer the stock, that Emanuel Deetjen had put up



1 a claim that we were not the bona fide owners of the stock,  
2 did not get bills of sale when we had come over originally,  
3 a few weeks prior, and unless we got bills of sale immediately  
4 over to the Bank Hofmann, that we were to lose the almost  
5 million dollars that we had made.  
6

7 Q Did you say anything to Mr. Stoller?

8 A I told Mr. Stoller that I think it would be a  
9 good idea for us to have a meeting with Jerry and Mr.  
10 Frank immediately and to set one up.

11 Q Was there any further conversation in that  
12 telephone call?

13 A I can't recall, Mr. Sorkin.

14 MR. SORKIN: Your Honor, that exhausts the con-  
15 versation, if your Honor wishes to break now, if this is a  
16 convenient time.

17 THE COURT: Ladies and gentlemen, as you heard,  
18 we are going to suspend a little early today and we will  
19 resume tomorrow morning at 10:00 o'clock. This morning I  
20 noted that several of you had trouble getting here on  
21 time and I am sure that was unintentional or unexpected  
22 on your parts.

23 However, let me say, that as you now realize,  
24 if you had not before, when one of us is late, that means  
25 we all have to wait until that missing person gets here.

So do your best to start out a little earlier and we will see you tomorrow morning at 10:00 o'clock. Have a good evening.

Mr. D'Onofrio, we will see you tomorrow morning at 10:00 o'clock.

THE WITNESS: Thank you, your Honor.

(Jury leaves courtroom, witness leaves courtroom.)

MR. FELDSHUH: Your Honor, some of the 3500 material that we received from Mr. Sorkin is illegible, unclear, and I would like to have it on the record as to what Mr. Sorkin intends to make available to us to replace that.

MR. SORKIN: Last Thursday, pursuant to the Court's instructions, I turned over approximately, I would guess, close to 35 separate pieces of 3500 material. I did not see which 3500 material was a good copy or not a good copy, and so forth. I told Mr. Alenstein the very first thing this morning, if they tell me which copies are illegible I would be happy to make another copy for them or show them the original. That is the best we can do, your Honor.

THE COURT: I suggest you get right at that now.

MR. FELDSHUH: Next question. Is there any other 3500 material which will be given to us in accordance

2 with the Court's instruction?

3 MR. SORKIN: We have turned over all the 3500  
4 material on Mr. D'Onofrio, your Honor, and we anticipate  
5 he will be another 48 hours on direct and cross.

6 MR. GOULD: This morning, your Honor, I got a  
7 piece of paper which I think is probably the most important  
8 piece of 3500 material, it is a document that has been  
9 in the possession of the Government for two or three  
10 years, and we got it this morning. Why, I don't know.  
11 We were supposed to get it last Thursday.

12 MR. SORKIN: Your Honor, it is 3501-HH, or so  
13 forth, and it was an oversight. I found it buried  
14 in there. It is a short document, only three pages long  
15 and they can look at it --

16 MR. GOULD: I find it very hard to credit  
17 that counsel did not know of the existence of that document.  
18 I think that is an imposition on the Court. That is the  
19 most euphemistic term I can think of. If counsel wants  
20 to suggest he didn't know of the existence of that  
21 document until this morning, I think he ought to make that  
22 representation very clear on the record, because I don't  
23 believe it.

24 MR. SORKIN: I am not --

25 THE COURT: He is not so representing.

MR. GOULD: Why didn't we get it Thursday?

THE COURT: He says it was a mistake on his part. He has already said mea culpa, as I understand it, is that correct?

MR. SORKIN: That is correct, your Honor.

THE COURT: More important than this last item, is this, that I would think tomorrow sometime you ought to turn over the next batch of 3500 materila, even though it may be true that counsel may not be able to really dwell on it much, but I think they are entitled to make that determination rather than the U.S. Attorney or the Court.

MR. SORKIN: Very well, your Honor. I would ask the Court this: The Government's next three witnesses are coming over from Switzerland and it is a terrible imposition on them reservationwise and I would ask Mr. Gould and Mr. Feldshuh if they could give me some idea of how long they will be on cross examination with Mr. D'Onofrio so that I can make arrangements for these three gentlemen.

THE COURT: I would ask them to do that but before they can do that, they would like to know when you will be through.

MR. SORKIN: I think by noon tomorrow, your

Honor.

MR. GOULD: If he wants to get these people from Switzerland, your Honor, and we are in the midst of cross examination of D'Onofrio, I would not object to withdrawing D'Onofrio and letting the other people testify.

MR. FELDSHUE: Neither would I, your Honor.

MR. SORKIN: Then I will turn over the 3500 material this evening, your Honor.

THE COURT: All right, I will see you tomorrow.

(Adjourned to September 10, 1974.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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2 United States of America

3 vs.

74 Cr. 159

4 Philip Stoller and Martin Frank

6 New York, New York.

7 September 10, 1974 - 10:00 A.M.

8 (Trial resumed.)

9 (In the robing room.)

10 THE COURT: Off the record.

11 (Discussion off the record.)

12 MR. FELDSHUH: On August 30th we wrote to Mr.  
13 Sorkin a letter requesting certain documents. We got the  
14 response to that request this morning, September 9, 1974.

15 I am bringing this to your Honor's attention because  
16 we intend to provide your Honor with a copy of our letter of  
17 August 30 and a copy of Mr. Sorkin's letter of September 9.

18 The purpose is that there are certain documents  
19 we feel we are entitled to as a matter of 3500 material which  
20 has not been given to us with regard to Mr. D'Onofrio.  
21 Particularly, Mr. D'Onofrio testified with respect to a list  
22 of names as to people other than his nominees and the other  
23 nominees who were going to get stock.

24 Mr. D'Onofrio prepared a list of such names. That  
25 list is in the possession of the United States Attorney.

2 We consider that a document prepared by Mr.  
3 D'Onofrio and we want to see that document as part of the  
4 3500 material.

5 That is my application.

6 THE COURT: Why don't you give me a copy of your  
7 letter and a copy, as you suggest, of Mr. Sorkin's  
8 reply and let me deliberate over this problem.

9 MR. FELDSHUH: Yes, sir. Suppose we do that  
10 during the luncheon recess?

11 THE COURT: I would say even earlier.

12 MR. FELDSHUH: I have only one copy of Mr. Sorkin's  
13 reply.

14 THE COURT: I will give it back to you, rest  
15 assured.

16 MR. SORKIN: Your HONOR, Mr. Feldshuh makes  
17 these claims without asking me first. Mr. Derfner was in  
18 my office --

19 THE COURT: I don't want to hear about all these  
20 naughty naughties --

21 MR. SORKIN: Why do we have to bring it to the  
22 Court when perhaps we can work it out.

23 THE COURT: You are not in jeopardy, nothing  
24 has been --

25 MR. GOULD: I have a suggestion. I would like



2 your Honor to canvass those who are here and maybe the members  
3 of the jury, because I think there is a possibility that  
4 people will want to work on maybe not Tuesday, which is  
5 the first Jewish holiday, but the second day, Wednesday, is  
6 not observed with the same degree of vigor and I am willing  
7 to sacrifice my religious scruples and work on Wednesday.

8 MR. FELDSHUH: I take it your Honor is willing?

9 MR. GOULD: If the jury will do that, we can save  
10 the day.

11 MR. FELDSHUH: In all of my years I have never  
12 failed to observe the second day, and I am a member of a  
13 conservative congregation --

14 MR. GOULD: Didn't you say you could work on Wed-  
15 nesday?

16 MR. FELDSHUH: No, I said I couldn't. I am sorry.

17 THE COURT: I was going to use this afternoon  
18 to take a reading with you gentlemen, and then a reading  
19 with the jury --

20 MR. GOULD: If he doesn't want to work, that is  
21 that, your Honor.

22 THE COURT: Off the record.

23 (Discussion off the record.)

24 (In open court; jury present.)

25 THE COURT: Good morning, ladies and gentlemen.

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2 MR. SORKIN: May I proceed, your Honor?

3 THE COURT: We need a witness, and then we will  
4 proceed.

5 R A M O N N. D' O N O F R I O resumed.

6 THE COURT: Now, Mr. Sorkin.

7 DIRECT EXAMINATION (continued)

8 BY MR. SORKIN:

9 Q Please keep your voice up so all the jurors and  
10 counsel and the Court can hear you, Mr. D'Onofrio.

11 I believe we left off yesterday where you were  
12 telling us about a conversation you had with Mr. Stoller over  
13 the telephone.

14 Do you recall that?

15 A Yes.

16 Q After this telephone conversation with Mr. Stoller,  
17 what if anything did you do?

18 A I called Mr. Herbert in Zurich, Switzerland.

19 Q Where were you at the time you made this call?

20 A At my home, in Brookville.

21 Q Did you have a conversation with Mr. Herbert?

22 A Yes.

23 Q Tell us what he said to you and what you said to  
24 him.

25 A I told Mr. Herbert that I had just received a

2 phone call -- I believe I said a French phone call -- from  
3 Mr. Stoller, and Mr. Stoller had told me that the stock that  
4 we had given to Bank Hofmann on Training With The Pros was  
5 not going to be transferred by Emanuel Deetjen because of  
6 some physical paper work complications, and that we are in  
7 danger of losing a million dollars.

8 Mr. Herbert said to me, "It is really not that  
9 serious, Ray, but I wanted to appear to Phil as serious,  
10 but we do have a problem," and I said, "What is the problem?"

11 He said, "When you were instructed originally  
12 by Mr. Frank to do this paper work, one of the things that  
13 was neglected was a bill of sale for the securities from  
14 your nominees to yourselves. You neglected to put a bill  
15 of sale in, and also a bill of sale from yourselves individ-  
16 ually to the bank. Armed with these two documents, I  
17 can get the transfer through to Emanuel Deetjen, although I  
18 didn't let Phil know that because I have another problem."

19 I said, "What is that, Freddie?"

20 He says, "The other problem is that the man in  
21 the office in Luzerne in Switzerland, Emanuel Deetjen, a  
22 good friend of mine, I will have to give about 5000 Swiss  
23 francs today, and you think now how I hate to talk to Phil  
24 about parting with money. I wanted to make him think  
25 the problem was indeed more serious than actually it is, but

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if I am armed with the documents and if you give me permission to expend the 5000 Swiss francs or whatever is needed, I can probably have it done."

So I said, "Well, Freddie, you have my permission, don't worry about it, whatever you have to spend to get it done, you have my permission to get it done. Are there any other problems?"

He says, "Yes, there is. Every time you and Phil have come over you have promised us that you are coming over with Mr. Allen and each and every time Mr. Allen doesn't show up. If you intend to come over this time with Phil and you are bringing over the bills of sale for Mr. Allen, please make sure that the bills of sale are notarized, because you will not have Mr. Allen here with you, whereas you and Phil will be directly here. If neither you or Phil one of you bring them all over and the people that are not coming over have their bills of sale notarized.

"I suggest for Jerry Allen you have Marty Frank's notarization. I have them here, but they know him and if they give me the okay with the Luzerne office of Emanuel Deetjen, everything will be all right."

Q Was there any further conversation with Mr. Herbert?

A Not that I recall.

Q What happened next?

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A Phil called me back and said he had made arrangements for a meeting at Marty Frank's office.

Q Subsequent to that telephone call did you have a meeting at Mr.Frank's office?

A Yes.

Q When was that?

A The following day, I would have to assume. We are now talking end of March or early April of 1969.

Q Who was present?

A Mr.Allen, Mr.Stoller, myself and Mr.Frank.

Q Tell us, please, what was said and by whom.

A The first remarks came from Mr. Stoller and he said, "Mr. Frank, we are about to lose a million dollars. We have a big problem. "

Marty said, "What is the problem?"

So I said, "I better pick up from here, Marty, because Phil doesn't know it, but I called Freddie after Phil called me last night and told me what the problem is. The precise problem is, we neglected to have bills of sale from our nominees to ourselves and we also neglected to have bills of sale from ourselves to the bank. It is a paper work problem. And Emanuel Deetjen, the brokerage firm for Bank Hofmann, will not transfer the securities into their name, and they call it street name, without these

2 bills of sale."

3 He says, "Well, fuck the bank, tell him to go to  
4 another broker."

5 I said, "I have already spoken to Freddie about  
6 going to another broker and he says they are too close to  
7 Emanuel Deetjen, Bank Hofmann, and they don't want to raise  
8 a red flag by going to another broker."

9 Marty says, "I can compel them to transfer that  
10 stock under the UCPLR of the laws of New York State. The  
11 bank is only a fiduciary agent of the company, Training With  
12 The Pros, and having nothing to do with the transfer of the  
13 stock."

14 Jerry said, "Look, Marty, we don't want legal  
15 problems, go through a lot of extra problems, all we want  
16 to do is get the bills of sale and get it done."

17 Marty says, "If that is what you want done, we will  
18 do it that way."

19 Jerry asked Marty, "Will you please prepare my bills  
20 of sale. You know how I am with paper work."

21 Marty then got on the phone to one of his  
22 secretaries, I don't know who, told her -- dictated a bill  
23 of sale by telephone, told her to put it on a blank piece  
24 of paper, and brought them in.

25 MR. GOULD: Could I have that last read?

2 THE COURT: Yes.

3 (Record read.)

4 MR. GOULD: Would your Honor excuse me for about  
5 ten minutes? I have to go up to the 17th floor. Mr.  
6 Alenstein will take over in my absence.

7 THE COURT: Is that agreeable to Mr. Stoller?

8 MR. STOLLER: Yes, sir.

9 THE COURT: Very good.

10 Q After these, as you called them, bills of sale were  
11 brought into the office, what happened then?

12 A I says, "Marty, we have another problem. Freddie  
13 also told me they must be notarized if Jerry isn't going to  
14 make the trip over again to Switzerland because as you know  
15 up to now we failed in getting him over there."

16 I said, "I would suggest we have them all notar-  
17 ized."

18 Marty took out his stamp and stamped several of  
19 these bills of sale and gave them to Jerry. I said, "I will  
20 take care of my own bills of sale, and Phil says he will  
21 take care of his."

22 Q Was there any further conversation at this meeting?

23 A Not that I can recall.

24 Q After this meeting, Mr. D'Onofrio, what if anything  
25 did you do?

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A I prepared bills of sale for each of my five nominees and I sent Mrs. Barder to have signatures put on two or three of them, and I believe my partner, Feeney, got one from his cousin or brother-in-law, and I may have got the signature of one or two of my own, but I prepared them, handwrote them.



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2 Q After your bills of sale, as you call them, were  
3 prepared, what if anything did you do with them?

4 A I collated them, collected them. We had another  
5 meeting --

6 Q Where?

7 A Phil and I prior to going to Switzerland at the  
8 first --

9 Q When was that?

10 A Around mid April of 1969, at the Swissair lounge.  
11 We collated all the bills of sale that we were supposed to  
12 have and I stacked mine in a bundle, my five, stacked his in  
13 a bundle, and I stacked Jerome Allen's because Phil was  
14 carrying over Jerry Allen's.

15 I went through to make sure we had the proper  
16 paperwork to go over and finish it.

17 Q Did you then go to Switzerland?

18 A Yes.

19 Q When you got to Switzerland, did you meet Mr.  
20 Herbert?

21 A Yes.

22 Q Did you have a conversation with him?

23 A The following day or two in Switzerland at Bank  
24 Hofmann with Phil Stoller, myself and Mr. Herbert.

25 Q Was anyone else present, to the best of your

1 rmrf 2 D'Onofrio-direct

2 recollection?

3 A No.

4 O Tell us, please, what was said and by whom?

5 A Phil handed me all of his and Jerry's documents  
6 first and I laid them out on the table. I laid mine out for  
7 Gypsy, I laid Phil's out for Shirley, and I laid out  
8 Jerome's for Erika, and I said, "Freddy, here are all the  
9 bills of sale of mine," and he thumbed through them and they  
10 were in order.

11 Then I said, "Freddy, here are all of Mr.  
12 Stoller's," and he thumbed through them and said, "You  
13 are missing a bill of sale from Phil to the bank. Phil,  
14 please would you write out one right now." And Phil  
15 said, "I don't want to write anything, have one of your  
16 people type it up."

17 So Freddy had one of his people type up a bill of  
18 sale for Phil individually and then brought it back in and  
19 Phil signed it in front of me and that made Phil's package  
20 complete and then he went through Jerry's package and  
21 Jerry's package was complete, and then the next thing  
22 Freddy said is that, "I may or may not -- I am not sure  
23 yet -- I may have to delete from these bills of sale the  
24 price of the stock and the total consideration of the  
25 dollar amounts from your nominees because right now the price

1           rmrf 3                           D'Onofrio-direct  
2           is \$55, \$60 a share and it is going to look very bad to  
3           Emanuel Deetjen to see you bought stock for \$7 a short  
4           time ago and that we are now transferring it while it is \$60  
5           a share, but leave that up to me."

6                       So he went in and made photostats of the original  
7           documents and came back out, handed me my five and my five  
8           were the same as I had presented him minus the deletion of  
9           the price per share and the total dollar volume.

10                      He gave me Phil's, which I handed to Phil, and  
11           he gave me Jerry Allen's which I handed to Phil or Jerry  
12           Allen.

13                      Q     Where are the        originals of these receipts,  
14           Mr. Stoller, Mr. Allen's and your own?

15                      A     In Bank Hofmann, in Switzerland.

16                      Q     What did you receive from Mr. Herbert?

17                      A     A photostat.

18                      Q     Let me show you now what has previously been  
19           marked as Government's Exhibits 5, 6, 7, 8, 9 --

20                      MR. SORKIN: May I have the Court's indulgence  
21           for one moment, please.

22                               (Pause.)

23                      Q     -- and 14.

24                      Would you look at these documents, Mr. D'Onofrio,  
25           and I ask you if you can identify these documents. Just  
          say yes or no.

1 rmrf 4 D'Onofrio-direct

2 A Yes.

3 Q Could you identify them? Just what are they?

4 A Generically, it is a receipt.

5 Q And No. 6?

6 A A receipt.

7 Q No. 7?

8 A Generically, a receipt.

9 Q No. 8?

10 A Generically, a receipt.

11 Q No. 9?

12 A Generically, a receipt.

13 Q And No. 14?

14 A Generically, a receipt.

15 Q Did I leave one out?

16 A I don't think so, but I would like to double-  
17 check.

18 Q There should be 5, 6, 7, 8, 9 and 14.

19 A That's right.

20 Q Are those the receipts that you received from Mr.  
21 Herbert or are they copies?

22 A These are photostats of the receipts.

23 Q Is that your handwriting?

24 A Five of them are and one is typed but the signature  
25 is mine.

1 rmrf 5

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2 Q Tell us, please, which are in your handwriting?

3 A 5, 6, 7, 8, and 9 are totally in my handwriting,  
4 with the exception of the signature of the other party,  
5 generically, and No. 6, the signature is mine. That was  
6 typed.

7 Q With respect to 5, 6, 7, 8 and 9, can you identify  
8 the signature of those people?

9 A Yes.

10 Q Would you tell us please No. 5, can you identify  
11 the signature --

12 MR. ALLENSTEIN: Your Honor, could I object just to  
13 the manner of doing it. I am sure it can be done properly.

14 Q Do you see the signature on Exhibit No. 5?

15 A Yes.

16 Q Of Paul Strauch?

17 A Yes.

18 Q Can you identify his signature?

19 A Yes.

20 MR. ALLENSTEIN: I don't think that solves it, your  
21 Honor.

22 THE COURT: I don't know whether it solves it  
23 either, but I am not sure I understand what you mean. I  
24 will allow him to identify signatures, if he can.

25 Q Is that his signature on No. 5?

1 rmrf 6 D'Onofrio-direct  
2 A It is.  
3 Q Would you look at No. 6?  
4 A Yes.  
5 Q Can you identify that signature?  
6 A Yes.  
7 Q Is that the signature of Warren Bundy?  
8 A Yes.  
9 THE COURT: I am sorry, I can't hear you.  
10 Q Is that the signature of Warren Bundy?  
11 A Yes.  
12 Q Would you look at No. 7?  
13 A Yes.  
14 Q Is that the signature of Katherine Osborn?  
15 A It is.  
16 Q Are you familiar with her signature?  
17 A Yes.  
18 Q Would you look at No. 8?  
19 A Yes.  
20 Q Is that the signature of Ruth Recca?  
21 A Yes.  
22 Q Are you familiar with her signature?  
23 A Very, yes.  
24 Q Would you look at No. 9, is that the signature  
25 of Kathleen Howe?

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2 A Yes.

3 Q Are you familiar with her signature?

4 A I am.

5 Q Would you look at No. 14? Is that your signature?

6 A This is my own signature, yes.

7 MR. SORKIN: At this time we offer 5 through 9  
8 and 14 in evidence.

9 (Pause.)

10 MR. ALENSTEIN: With your Honor's permission, I  
11 have a few questions.

12 VOIR DIRE EXAMINATION

13 BY MR. ALENSTEIN:

14 Q Mr. D'Onofrio, I will show you Exhibits 5 through  
15 9 and 14 for identification and I ask you whether those  
16 are the physical documents that you received, the  
17 physical pieces of paper that you received from Mr. Herbert?

18 A Yes.

19 Q How can you be sure of that, sir?

20 A Because I had them in my possession from the moment  
21 he gave them to me and I gave them to the United States  
22 Government.

23 Q Since giving them to the United States Government  
24 have you seen them before today?

25 A I have seen them once or twice before today, yes.

1 rmrf 8

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2 Q I think you said that Exhibits 6 through 9 were  
3 written in longhand by yourself, is that so?

4 A Well, by longhand do you mean --

5 Q I mean as opposed to typewriting --

6 MR. SORKIN: 5 through 9.

7 Q I'm sorry, 5 through 9.

8 A 5 through 9, the other one was typed.

9 Q 5 through 9 you wrote?

10 A I printed.

11 Q Did you do them all at the same time?

12 A I recall doing them all at the same time, yes.

13 Q Was that on February 21st?

14 A No, it was not.

15 Q Was it on February 22nd?

16 A No.

17 Q Was it on February 27th?

18 A It was not on the dates specified on the  
19 documents.

20 Q When was it?

21 A It was at a later date. They are pre-dated.

22 Q You mean dated before they were signed?

23 A No. They were dated before they were signed and  
24 they were signed much later than the date that appears on  
25 the document.



1 rmrf 9

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2 O Do you remember when you actually printed them?

3 A You mean the day of the week or the month?

4 Q I mean the date.

5 A Not the date when I wrote them, no.

6 O It was in February of --

7 A No, it was not. I just told you that.

8 Q You have me confused. You say they were signed  
9 much later than they were prepared?

10 A They were signed a day or two after they were  
11 prepared, but the date on those documents reflect at least  
12 a month earlier, the date of the transaction. In other  
13 words, they are back-dated instruments.

14 Q Oh, I see. What did you do, you looked to find  
15 the dates of the sales to these people --

16 MR. SORKIN: Your Honor, I am going to object.  
17 I think we have gone beyond voir dire.

18 THE COURT: I would agree.

19 MR. ALENSTEIN: I will withdraw that, your  
20 Honor.

21 Q Have you ever seen Kathleen Osborn sign her name?

22 A Many, many times. She worked for me for 18 years.

23 Q Is the same true of Warren Bundy?

24 A Warren Bundy, I had only seen his signature about  
25 five times, but I have seen it signed in my presence before.

1 rmrf 10 D'Onofrio-direct

2 BY MR. FELDSHUH:

3 Q Were you present when each of these documents, 6, 7,  
4 8 and 9 were signed by the respective people whose signatures  
5 appear at the bottom?

6 A No. I said I was not, Mr. Feldshuh.

7 Q How often have you seen Mr. Warren Bundy's signature?

8 MR. SORKIN: I think that was just asked and answered,  
9 your Honor.

10 MR. FELDSHUH: I didn't hear the answer.

11 A I said about four or five times, in my presence.

12 Q Does that apply to the rest of the signatures other  
13 than yours?

14 A You would have to ask me on each of the signatures.

15 Q How about Mr. Paul Strauch?

16 A Yes.

17 Q What was the occasion for your seeing him sign on  
18 prior occasions?

19 A He was partners with me in many business ventures,  
20 in oil wells and cattle raising. I have seen his signature  
21 at least 100 times.

22 Q How about Kathleen Howe? Is that H-o-w-e?

23 A That is correct.

24 Q I show you Exhibit 9-D. Is this a full copy of  
25 the original?

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2 A It is, but evidently their photostat man may have  
3 clipped an eighth of an inch on the end.

4 Q Apparently something is written on the bottom  
5 that doesn't appear on this paper.

6 MR. SORKIN: That is not what he said.

7 A It is a full copy.

8 Q Is there anything left out from the original?

9 A W-E on her name did not come out on the photostat.

10 Q Did you write under her name?

11 A Yes.

12 Q Is that your printing underneath her name?

13 A It is.

14 Q All that appears on here is H-O?

15 A And part of the W.

16 Q And you identify that little spot as being part  
17 of the W?

18 A Absolutely.

19 Q Except for this difference, is this a true copy?

20 A It is a true copy with no difference other than  
21 what you pointed out, a slice on the machine.

22 Q True copy except that it isn't complete?

23 MR. SORKIN: That is not what he testified to,  
24 your Honor. He has already said the Xerox machine cut off  
25 part of the W and the E but other than that it is a full

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2 copy.

3 THE COURT: Whatever he said, the jury will decide.

4 Do you have anything further to add?

5 MR. FELDSHUH: Yes.

6 Q Did you make these photostats?

7 A No, Mr. Herbert had them made at Bank Hofmann.

8 Q When he brought the photostats back to you, did  
9 you also see the originals at that time?

10 A He had the originals with him, but he did not  
11 show them to us simultaneously, side by side.

12 MR. FELDSHUH: No further questions.

13 MR. SORKIN: Your Honor, we offer 5 through 9 and  
14 14 in evidence.

15 MR. ALENSTEIN: I will object to them, if your  
16 Honor please, on the ground that they are reproductions by  
17 which the witness' own testimony do not contain everything  
18 that the originals contained.

19 MR. SORKIN: That is not the witness' testimony,  
20 your Honor.

21 THE COURT: Mr. Sorkin, please, that is not your  
22 function here. I take it you join in the objection?

23 MR. FELDSHUH: Yes, your Honor, I join in it.

24 THE COURT: The objections are overruled and the  
25 documents 5, 6, 7, 8, 9 and 14 are received.

(Government's Exhibits 5, 6, 7, 8 9 and 14

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received in evidence.)

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2 BY MR. SORKIN:

3 Q Mr. D'Onofrio, let me show you now what has  
4 previously been marked as Government's Exhibits 21 through  
5 25, and I ask you if you can identify these documents.

6 (Pause.)

7 A Yes.

8 Q Would you please look at 21 through 25 and tell us  
9 generically what they are?

10 A They are receipts.

11 Q Where did you first see these documents?

12 A Three of them I first saw at Martin Frank's office,  
13 22, 23 and 24. 21 and 25 I did not see until my meeting  
14 at the Swissair lounge with Mr. Stoller.

15 Q I have shown you photocopies. Did you see the  
16 originals?

17 A I saw the originals of all of them.

18 Q Where did you see the originals?

19 A I saw the originals of 22, 23 and 24 at Martin  
20 Frank's. I saw the originals of 21 and 25 at the Swissair  
21 lounge and I handled all of these originals at Bank Hofmann  
22 for the conclusion of the transaction.

23 Q Is that at the meeting with Mr. Herbert and Mr.  
24 Stoller?

25 A That is correct.

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2 Q Did you or Mr. Stoller give these originals  
3 to Mr. Herbert?

4 A I gave these documents to Mr. Herbert.

5 Q What if anything did he do with them?

6 A He collated them to make sure they were all proper  
7 and correct and he went in at the same time as photostating  
8 mine and photostated these and gave me back this set of  
9 documents.

10 Q Can you tell us, please, whether these documents  
11 that you have in your possession are the exact documents  
12 that Mr. Herbert gave back to you?

13 A Yes.

14 Q These that you are holding, or are they copies.  
15 Exact documents?

16 A These are the documents.

17 Q How can you tell?

18 A Because I remember them.

19 Q Well, my question to you is this: Are they --

20 A Oh, they are photostats.

21 Q Are they photostats of the copies --

22 A They are similar to my own. The blocking out  
23 of the dollar amounts exists and the blocking out of the  
24 amount of shares exists, but they are the same photostats  
25 similar to my own documents.

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2 MR. FELDSHUH: Objection, your Honor. This is  
3 incomprehensible. I don't know what he is talking about.

4 THE COURT: Overruled.

5 MR. FELDSHUH: Whether this is a photostat --

6 THE COURT: I said overruled.

7 MR. FELDSHUH: I am sorry, I didn't hear you,  
8 your Honor.

9 Q Have you seen Mr. Frank sign his signature before?

10 A Yes.

11 Q Would you look at 21 through 25 and I ask you  
12 if that is Mr. Frank's signature?

13 A Yes.

14 MR. SORKIN: Your Honor, at this time we offer 21  
15 through 25 in evidence and I show them to defense counsel.

16 BY MR. SORKIN:

17 Q Mr. D'Onofrio, where are the originals of these  
18 documents?

19 A In Bank Hofmann, in Zurich, Switzerland.

20 (Pause.)

21 VOIR DIRE EXAMINATION

22 BY MR. ALENSTEIN:

23 Q I think you said you saw Government's Exhibits  
24 21 through 25 for identification at a meeting in the  
25 Bank Hofmann.



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A No, I did not. I said that was one of the places  
I saw them.

Q One of the places you saw the originals of these --

A One of the places, yes.

Q In the Bank Hofmann?

A Yes.

Q You said that Mr. Herbert was there?

A Yes, and Mr. Stoller.

Q And Mr. Stoller was with you?

A Yes.

Q Was anyone else there?

A No.

Q Mr. Herbert took the originals out of the room,  
you said?

A Yes.

Q The originals of 21 through 25 had been provided  
by Mr. Stoller, had they not?

A That is correct.

Q And when Mr. Herbert came back into the room,  
Mr. Stoller was there, was he not?

A That is correct.

Q And yet he handed these to you and not to Mr.  
Stoller?

A That is correct..

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2 Q What did you do, you turned around and gave them  
3 to Mr. Stoller?

4 A There was another part of the transaction. He  
5 then handed me all of Mr. Stoller's, and then I turned  
6 to Mr. Stoller and said, "Phil, here are yours and here  
7 are Mr. Allen's."

8 Q Was Mr. Stoller sitting in a far away part of the  
9 room?

10 A He was sitting very close.

11 Q I will show you Government's Exhibits 21 through  
12 25 for identification and I am referring now, sir, to the  
13 physical pieces of paper.

14 Did you turn them over to the Government?

15 A No, I did not.

16 Q Do you know where the Government got them?

17 A No, I don't.

18 MR. FELDSHUH: I have no questions.

19 MR. SORKIN: Your Honor, we offer them in evidence  
20 at this time.

21 MR. ALLENSTEIN: Objection.

22 THE COURT: I thought earlier you had said these  
23 were the actual pieces of paper that you turned over to the  
24 Government.

25 THE WITNESS: Not these, no, your Honor, but my

2 own.

3 THE COURT: Not this series, 21 through 25?

4 THE WITNESS: That's right.

5 THE COURT: What you are saying is that it is  
6 your belief that these are actual photocopies or copies  
7 of the documents which you handled, some in Mr. Frank's  
8 office, some in the Swissair lounge, and all in the Bank  
9 Hofmann.

10 THE WITNESS: Actually further than that, your  
11 Honor.

12 I am saying those documents are those that were  
13 given to me by Mr. Herbert at Bank Hofmann, these photostats,  
14 but I don't know how the Government got them.

15 THE COURT: You are saying that they are copies  
16 of what Mr. Herbert gave you, correct?

17 THE WITNESS: Yes.

18 THE COURT: What is the position of the defense?

19 MR. ALENSTEIN: Could I ask one more question --

20 MR. FELDSHUH: We object to their introduction  
21 as no proper foundation being laid.

22 MR. ALENSTEIN: I will join in that.

23 THE COURT: Do you wish to ask another question?

24 MR. ALENSTEIN: Yes, sir.

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BY MR. ALLENSTEIN:

Q When was the last time you saw the originals, Mr. D'Onofrio?

A In 1969, in late March or early April or mid-April.

MR. ALLENSTEIN: I join in the objection, your Honor.

THE COURT: I will overrule the objections and 21 through 25 will be received for whatever they are worth.

(Government's Exhibits 21 through 25 received in evidence.)

BY MR. SORKIN:

Q Mr. D'Onofrio, let me show you what has previously been marked as Government's Exhibits 26, 27, 28, 29, 30 and 31.

Would you look at these documents and I ask you if you can identify these?

(Pause.)

A Yes. Generically --

Q Please go through them by exhibit number.

A 26 is a receipt, 27 is a receipt, 28 is a receipt, 29 is a receipt, and 30 is a receipt and 31 is a receipt.

Q Where was the first time you saw these documents or originals of these documents?

2 A 26, 27, 28, 29 and 30 I first saw at the Swissair  
3 lounge prior to my visit to Switzerland with Mr. Stoller.

4 Q Did anyone show them to you?

5 A Mr. Stoller showed them to me and gave them to  
6 me to collate with all of our receipts.

7 Q When did you next see them?

8 A Next, at Bank Hofmann I had 26, 27, 28, 29 and 30  
9 physically in my hands and handed them to Mr. Herbert for  
10 Account Shirley for Mr. Stoller.

11 Q What if anything did Mr. Herbert do with 26  
12 through 30?

13 A He took them and he photostated them along with  
14 the other exhibits we have previously talked about and  
15 handed them back to me.

16 Q Are those the documents that Mr. Herbert handed  
17 back to you or are those photocopies of what he handed back  
18 to you?

19 A These are photocopies.

20 Q Would you look at Government's Exhibit 31 for  
21 identification?

22 A Yes.

23 Q Have you seen Mr. Stoller sign his name?

24 A Yes.

25 Q Can you identify Mr. Stoller's signature on

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Government's Exhibit 31?

A I can.

Q Is that his signature?

A It is.

Q Where was that signed?

A In front of me, at Bank Hofmann.

Q Where was that receipt prepared?

A That was prepared on my instructions at Bank Hofmann.

Q Could you tell us why you believe that document was prepared at Bank Hofmann?

A Because at that time I made an innuendo to Mr. Herbert as to why they did not use the American typewriter because they have an umlatin Zurich, Switzerland.

Q Over what letter?

A The U.

Q What is an umlat?

A That is two periods that do not appear on other than Swiss-German typewriters, and I didn't like it at the time.

MR. SORKIN: At this time we offer Government's Exhibits 26 through 31 into evidence and I show them to defense counsel.

(Pause.)

2 VOIR DIRE EXAMINATION

3 BY MR. ALENSTEIN:

4 Q Mr. D'Onofrio, I think you said that 26 through  
5 31 for identification are not the physical documents  
6 that you were handed by Mr. Herbert. That is true, is it  
7 not? They are copies of them.

8 A They are copies, yes.

9 Q Did you take the physical pieces of paper which  
10 are Government's Exhibits 26 through 31 for identification --  
11 did you give them to the Government?

12 A No.

13 Q Do you know where the Government got them?

14 A No.

15 Q You say you have seen the originals of 26  
16 through 31 for identification?

17 A I slept with them.

18 Q You have seen them and you saw them in Mr. Herbert's  
19 office, for example, is that so?

20 A At one point, yes.

21 Q Was that the last time you saw the originals?

22 A That is correct.

23 Q And as in the case of certain previous documents,  
24 that was five years ago or more?

25 A That is correct.

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2 Q When these were handed back was that also at a  
3 time when Mr. Stoller was sitting right next to you?

4 A Right adjacent to me.

5 Q And Mr. Herbert gave them to you and not to Mr.  
6 Stoller?

7 A That is correct.

8 Q And you then turned around and gave them to Mr.  
9 Stoller?

10 A Later I collated them for Mr. Stoller and gave  
11 them to him, a moment or two later, a minute or two  
12 later.

13 Q We can agree that 26 through 31 for identification  
14 are not actually copies of what was handed to Mr. Herbert,  
15 isn't that so?

16 A I don't understand your question.

17 Q There is something missing from them that was  
18 on there when they were handed --

19 A The same as the others, the price was omitted and  
20 the total consideration, as per Mr. Herbert's suggestion.  
21 He didn't say whether he would omit them when traveling to  
22 Emanuel Deetjen --

23 Q The originals would look somewhat different from  
24 those exhibits?

25 A They look exactly the same except the price is



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D'Onofrio-direct

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left out --

Q Well, that is the omission I am talking about.

A If that is an omission, yes, I agree with you.

BY MR. FELDSHUH:

Q That omission appears on all the exhibits previously marked and received in evidence, is that correct?

A To the best of my knowledge, Mr. Feldshuh, yes.

Q Who made the alteration in those exhibits?

A Mr. Herbert.

Q Did you see him make that alteration?

A I did not.

Q Actually, all that happened was that Mr. Herbert left the room with a group of papers?

A With these papers.

Q A group of papers?

A All these exhibits we have been talking about.

Q Not the exhibits, but the originals, on some kind of paper, and left the room with them?

A With the originals of these.

Q Those originals were different from these copies?

A They had the price in and the total consideration.

Q Can you tell me how was the price stricken out?

A How? I don't know.

Q You didn't rewrite the originals, did you, with

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the price omitted?

A No.

Q And the number of shares omitted?

A No.

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D'Onofrio-direct

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Q So the fact is, is it not, with regard to the papers that you saw in the Swiss lounge, these papers are different?

A They have the omission of the price and the total consideration.

Q When Mr. Herbert came back into the room with -- withdrawn.

When he came back into the room did he come back with the originals and with photostats?

A Yes, he did.

Q On that occasion did you compare one with the other?

A No, I did not.

Q You just took the papers that he handed to you, is that right?

A And then I collated for Gypsey, Erika and Shirley.

Q But the originals were apart from the collation?

A Mr. Herbert had them in his pile.

Q So the fact is all you did was look at these photostats and put them in your briefcase or something of that sort?

A No, I looked at mine, I put mine in my attache case, I looked at Mr. Allen's, and I looked at Mr. Stoller's

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D'Onofrio-direct

and segregated them for Mr. Stoller and gave them to him.

Q Did you read through each of those you gave to Mr. Stoller and Mr. Allen or just glance at them?

A I think I just glanced at them, Mr. Feldshuh.

MR. FELDSHUH: No further questions, your Honor.

THE COURT: I take it these exhibits, 26 through 31 are offered, and I take it further that both defendants object on the grounds similar to the earlier objections?

MR. FELDSHUH: Yes, your Honor.

THE COURT: Those objections are overruled and 26 through 31 are received for whatever they are worth.

xxx (Government Exhibit 26 through 31 for identification received in evidence.)

THE COURT: Mr. Sorkin, I am puzzled by one thing: I had assumed that copies of these documents were already made available to the defense and I also assumed that perhaps you would have extra copies, but apparently the latter is not so, and I am not sure about the former.

MR. SORKIN: Your Honor, the Government in its first bill of particulars filed months ago turned over copies of all these documents to defense counsel.

MR. DERFNER: That is not quite true, your Honor. Some were previously turned over and some were not.

THE COURT: I didn't mean to start a typical,

1 petty argument that we can get into on these matters, but I  
2 would suggest if defense counsel feel they are missing  
3 copies, they should tell Government counsel.  
4

5 If there is any difficulty and I have to arbitrate  
6 this painful problem, let me know and I will because we  
7 are not moving with any kind of reasonable dispatch what-  
8 soever.

9 None of you are babes in the woods as far as  
10 these types of cases are concerned, and you know these docu-  
11 ments are not secret and were not intended to be. I don't  
12 want to fuss around with any more documents for the rest  
13 of this case.

14 MR. SORKIN: We turned them over in discovery,  
15 your Honor, and they were reviewed by defense counsel  
16 several weeks ago.

17 THE COURT: If any defense counsel feels he  
18 doesn't have any of these documents at this stage, whether  
19 he has seen them or not, and you feel aggrieved, I put you  
20 on your burden to tell me so. I don't want any more of  
21 this unseemly paper shuffling which chews up great gobs of  
22 the jury's time and mine.

23 MR. FELDSHUH: May I suggest, your Honor --

24 THE COURT: Don't make any suggestions. We have  
25 said enough for the time being. If you want to suggest any-

1 rmb-4

D'Onofrio-direct

2 thing further, I open invited you to, sir, among others.

3 Do you have any more direct examination of this  
4 witness?

5 MR. SORKIN: I do, your Honor.

6 THE COURT: Then let's proceed without further  
7 adol

8 BY MR. SORKIN:

9 Q Would you look at Government Exhibit 25 in evidence  
10 and I did not ask you if you have seen Mr. Jerome Allen's  
11 signature on prior occasions?

12 A Yes.

13 Q Is that Mr. Allen's signature?

14 A It is.

15 MR. SORKIN: Your Honor, I will not delay the  
16 direct. What I would like --

17 THE COURT: You have every right to show exhibits,  
18 but let's get to it.

19 MR. SORKIN: I have taken off the appropriate  
20 slip for Mr. Feldshuh --

21 MR. FELDSHUH: Is it off?

22 THE COURT: Counsel knows his responsibilities  
23 here and he has represented he has and I think that should be  
24 good enough for you and for me.

25 MR. SORKIN: Your Honor, at this time I would

1 rmb-5

D'Onofrio-direct

2 like to show the jury Government Exhibits 6, 24, 14, 25,  
3 27 and also 31, which they can pass around at their leisure.

4 (Pause.)

5 Q With respect to all of these exhibits that I  
6 have shown you, Mr.Feldshuh I believe alluded to the fact  
7 as to when they were prepared. Could you tell us, please,  
8 when they were prepared?

9 A Some time in early March of 1969.

10 Q When did you see Mr.Frank put his notary, as  
11 you called it?

12 MR. FELDSHUH: Objection, your Honor. This is  
13 already asked and answered.

14 THE COURT: Yes.

15 Q Mr.D'Onofrio, after the meeting with Mr. Herbert  
16 and Mr.Stoller, did you then return to the United States?

17 A Yes.

18 Q Did you then have a conversation with Mr. Stoller?

19 A Yes.

20 Q When was that?

21 A I met with Mr.Stoller and Mr. Allen around mid-  
22 April of 1969 in the apartment on East 60th Street.

23 Q Did you have a conversation?

24 A Yes.

25 Q Was anyone else present?

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D'Onofrio-direct

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A Mr.Arden, Mr.Stoller, Mr.Allen and myself.

Q Tell us, please, what the conversation was, what each person said and to whom?

A I asked Jerry and Phil what were they doing to tout the stock now to get it out of John Bonavia and Muir Weissinger's hands, so they could start making money.

Jerry asked me what I am doing and I said "I touted to Baer, Wald & DeBoer and to another member firm and they have already been buying a thousand shares or so, but I don't see any activity on your parts."

Jerry says, "Well, I have a meeting with a gentleman named Brad Thurlow who may write up a letter on it and may get some stock sold as a result of that letter."

I said, "Phil, what have you done?"

He said, "I am going to get to work on it right now. I am working on it."

I said, "I wish you would because it looks like I am the only one in the ballgame doing any work."

I went to Joe Arden's desk phone and he went to his own desk phone --

Q Who is "he"?

A Mr.Stoller. He called a Miss Eleanor Wein, that represents a member firm.

Q WERE you on the extension when he spoke to Eleanor



1 Wein?

2 A Yes.

3 Q Tell us, please, what Mr.Stoller said.

4 A He said, "Eleanor, dear, this is Phil," and she  
5 said hello. "What can I do for you today, Phil?"

6 He says, "Eleanor, you have to get in on this  
7 Training With the Pros deal right now. The stock is at the  
8 lowest level you are ever going to see it again, 55 or 57.  
9 You better start buying it right now for your clients. It  
10 is another Franklin Mint. I guarantee you the stock will  
11 go to 70, 80, and you will make a bundle on it."

12 She says, "Let me put my house in order and see how  
13 much I can buy. I can't promise anything, but I will do  
14 the best I can."

15 He got off the phone and said, "That is good for  
16 at least two or three thousand shares, Ray ."

17 Q Did you ever hear of a man named Nathan Hyman?

18 A Yes, I have heard his name.

19 Q From whom?

20 A Well, I have had a relationship with him by tele-  
21 phone.

22 Q How did you get introduced to him?

23 A Mr.Stoller introduced me to him.

24 Q When was that?

1 rmb-8

D'Onofrio-direct

2 A In the summer of '68, I believe.

3 Q What if anything did Mr. Stoller tell you about Mr.  
4 Hyman?

5 A That he was some sort of a registered rep or  
6 broker-dealer.

7 Q Have you ever heard of a man named Walter Baruch?

8 A I heard his name mentioned at meetings with them, but  
9 I don't know the man.

10 Q Meetings with whom?

11 A Stoller and Allen.

12 Q Do you know who mentioned his name?

13 A No, I don't recall.

14 Q Did there come a time when you learned that the  
15 Securities and Exchange Commission had begun an investigation  
16 into the trading activity of Training With the Pros?

17 A Yes.

18 Q How did you first learn that?

19 MR. ALLENSTEIN: If your Honor please, maybe we  
20 ought to have an offer of proof on this. It doesn't seem  
21 to be relevant.

22 THE COURT: Well, I am not convinced it is  
23 relevant either. It is a good time to take the morning  
24 recess, in any event, and perhaps we could take this up while  
25 the jury is in recess.

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D'Onofrio-direct

1 Ladies and gentlemen, we will take the morning  
2 recess now, ten minutes.  
3

4 (Jury leaves the courtroom.)

5 (Witness leaves the courtroom.)

6 THE COURT: Mr. Sorkin, can you enlighten us  
7 as to just what directionn you propose to take here?

8 MR. SORKIN: Yes, your Honor. It is relevant  
9 for a number of reasons, the first being that Mr.Stoller --

10 THE COURT: What is relevant?

11 MR. SORKIN: The fact that Mr. D'Onofrio acquired  
12 knowledge that the SEC began an investigation. He then  
13 proceeded, after learning this fact, to have numerous con-  
14 versations with Mr.Stoller and a lesser number of conversa-  
15 tions with Mr.Frank. During the course of these conversations  
16 both Mr.Stoller and Mr.Frank made numerous admissions not  
17 only with respect to Training With the Pros, but also  
18 with relation to the fact that Mr.Stoller had testified under  
19 oath at the SEC, for which he has been indicted on five counts  
20 of making false statements,

21 Additionally, your Honor, the Government has  
22 also disclosed that another object of the conspiracy was to  
23 conceal the conspiracy and to keep the activities of Messrs.  
24 Stoller, Frank, D'Onofrio, Allen and Herbert from becoming  
25 known to the appropriate authorities, and this activity,

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D'Onofrio-direct

your Honor, not only continued through June of 1969, but it also continued well into the latter part of 1969, well into 1970 and indeed there were conversations as far as 1972 and 1973 where admissions were made by these defendants to Mr. D'Onofrio and others.

MR. ALENSTEIN: Could your Honor just hear me for a minute? If he has testimony to elicit which has admissions by defendants, certainly, I don't think there is any way we can stop that, but all I am trying to suggest is that there is no reason to poison the jury's mind with talk of SEC investigations --

THE COURT: The jury's mind has already been poisoned. I among others read the indictment to them. They all know there was an investigation because they have been told that Mr. Stoller is accused of various counts of lying or obfuscating the truth in the SEC inquiry.

So I don't understand that point.

MR. ALENSTEIN: I am guessing that the jury --

THE COURT: I am telling you that the jury has been told by, among others, the Judge. You were here, you heard me.

MR. ALENSTEIN: Not about an investigation.

THE COURT: Maybe you are willing to assume the jury is stupid, but I am not, believe me, and I am not going

1 to make rulings on any old wife's tales which lawyers and  
2 Judges dearly love to throw around, which are based on  
3 some notions of ours that jurors are stupid.  
4

5 I don't buy that. Sorry, but that won't impress  
6 me at all.

7 I am afraid that I agree with Mr. Sorkin, that  
8 this is relevant on the several bases which he offers. So  
9 we will go ahead.

10 Let us take a short recess -- how much longer do  
11 you have, Mr. Sorkin? We have not moved very swifly this  
12 morning at all.

13 MR. SORKIN: I still stand by what I said yester-  
14 day, your Honor, I think we can get through with the direct  
15 testimony by our luncheon break.

16 THE COURT: Off the record.

17 (Discussion off the record.)

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2 MR. SORKIN: Your Honor, I poiknt out now that  
3 I intend to elicit from Mr.D'Onofrio the conversation between  
4 Mr. D'Onofrio and one Joseph Bonavia, which is outside the  
5 presence of any of the defendants.

6 I represent to the Court that the Government intends  
7 to call Mr. Bonavia as a witness and both parties to the  
8 conversation will be present. I can either not go into  
9 that conversation or go into it, as your Honor wishes.

10 THE COURT: Let's go ahead and see what happens.  
11 Every time we turn around somebody wants to raise a problem  
12 and we better stick to the one tack you are already on and  
13 then we will face that problem if and when it arises.

14 (In open court; jury present.)

15 BY MR. SORKIN:

16 Q I believe we left off where I asked did there come  
17 a time where you learned if the SEC had commenced an investi-  
18 gation into the underwriting and after market of Training  
19 With the Pros?

20 A Yes, I did.

21 Q How did you learn that?

22 A By a telephone call from Mr. Moss to me.

23 Q After this telephone conversation, what did you  
24 do, if anything?

25 A I went to Mr. Moss' office and I picked up

1 a copy of a letter that was sent to him anonymously.

2 Q What if anything did you do with that letter?

3 A I had photocopies made.

4 Q Could you please tell us the time when you  
5 learned this?

6 A Late April of 1969.

7 Q Go ahead.

8 A I had photocopies made and then went to East 60th  
9 Street and showed them to Phil and Jerry.

10 Q Did you have a conversation with Mr. Stoller and  
11 Mr. Allen there?

12 A Yes. I told them I was very concerned about  
13 the letter. They read it. Phil said it was a letter from  
14 a nut, not to worry about it. Jerry and I felt it was more  
15 than a letter from a nut, that it could possibly lead to an  
16 investigation, and decided to meet with Mr. Frank again.

17 Q Did there come a time after this meeting when you  
18 met with Mr. Frank?

19 A The next day or two, but I am not sure which.

20 Q Where did you meet with Mr. Frank?

21 A At his office.

22 Q Did you have a conversation with him?

23 A Yes.

24 Q Who else was present?

25

1  
2 A Mr.Stoller, Mr. Allen, myself and Mr.Frank.

3 Q Tell us, please, what you said to them and what  
4 if anything each of them said.

5 MR. FELDSHUH: Objection.

6 THE COURT: Overruled.

7 MR. FELDSHUH: May I state the grounds for the  
8 record, your Honor?

9 THE COURT: If you feel so inclined, but I think  
10 I already know the grounds, which I don't accept. So  
11 exception to you.

12 MR. FELDSHUH: Thank you, sir.

13 THE WITNESS: Could you please repeat the question?

14 Q I asked what each of them said and what you said  
15 and please identify the speakers.

16 A I told Mr. Frank that I had visited Bud Moss'  
17 office the other day and that he gave me a copy of this letter  
18 which I showed to Mr.Frank and that I was very disturbed  
19 about it, and Phil explained that he is not too concerned  
20 about it because it is a nutty type letter anyway, and  
21 in the democratic process, Mr.Allen and myself prevailed,  
22 2 to 1, in visiting with Mr.Frank, and I asked him to read the  
23 letter.

24 Mr.Frank read the letter and he says, "It is a  
25 highly knowledgeable letter and probably somebody went short



1 rmb-4  
2 on the stock and is irritated about it, " but he will check  
3 with someone at the SEC to see if there is an order of in-  
4 vestigation.

5 Q Was there any further conversation at this meeting?

6 A Yes. He says, "If there is an order of investiga-  
7 tion, Ray, make sure that you talk to Mr. Moss and make sure  
8 that this firm or that I represent Training With the Pros  
9 so I can protect us."

10 Q Was there any further conversation at this meeting?

11 A Not to my recollection.

12 Q After this meeting, did there come a time when  
13 you met Mr. Stoller?

14 A Yes.

15 Q When was that?

16 A In late June of 1969.

17 Q Where did you meet Mr. Stoller?

18 A At my office, on 136 East 57th Street.

19 Q Was anyone else present?

20 A No.

21 Q Tell us, please, Mr. D'Onofrio, what you said to  
22 Mr. Stoller and what he said to you.

23 A Mr. Stoller --

24 MR. ALLENSTEIN: Excuse me. If your Honor please,  
25 I don't like to waste time, but I think it is important for

2 our purposes that we put the grounds for the objection on  
3 the record at the side bar.

4 THE COURT: Gentlemen, we went into this during  
5 the recess.

6 MR. ALLENSTEIN: I don't think it is the same  
7 objection. This is something else, your Honor. It isn't  
8 that at all.

9 THE COURT: If you wish to object, object, and I  
10 will rule.

11 MR. ALLENSTEIN: If your Honor please, the  
12 conversations now are being offered for proof of an object  
13 of the alleged conspiracy that Mr. Sorkin referred to during  
14 the recess.

15 Your Honor has authority in a memorandum submitted  
16 in one of the pretrial motions which shows that that is  
17 not proper proof, that that is not properly alleged as an  
18 object of the conspiracy.

19 THE COURT: Well, gentlemen, I don't know what  
20 the point of all this is, because I think we covered this,  
21 among other things, during the recent recess, and I assume,  
22 Mr. Sorkin, that this is along the lines of your offer you  
23 made during that discussion.

24 MR. SORKIN: That is correct, your Honor.

25 THE COURT: Let's go ahead.

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D'Onofrio-direct

1                   Q     Mr.D'Onofrio, I asked you what you said to Mr.  
2                   Stoller and what Mr.Stoller said to you.  
3

4                   A     Mr.Stoller said to me that he had just had half  
5                   a day down at the SEC.    I said, "What?"

6                   He said, "You heard me, I was down at the SEC all  
7                   day."

8                   I said, "What in the hell were you doing down at  
9                   the SEC?"

10                  He says, "Well, I got a subpoena."

11                  I said, "Who did you go with, who was your lawyer?"

12                  He said, "I didn't go with a lawyer, I went by  
13                  myself."

14                  I said, "Are you out of your fuckin mind, you  
15                  went to the SEC without a lawyer?"

16                  He said, "Why not?  What did I have to hide?"

17                  I said, "What did you say to them?"

18                  He said, "I showed them all my papers, Marty  
19                  said in the event we got caught we could show them."

20                  I said, "What else did you say?"

21                  He said, "I told them about the bank, I was a  
22                  consultant to the bank."

23                  I said, "Phil, you got to be out of your mind at  
24                  this point.    I don't know what to say to you.    You made  
25                  one of the craziest moves you could ever make."

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D'Onofrio-direct

He says, "Don't even be worried, those dumb bastards at the SEC don't know what they are doing anyway."

I said, "I am going to call your partner. I think we better have a conversation with Mr. Frank on this."

Q What did you then do?

A I called Mr. Allen.

Q Did you have a conversation with Mr. Allen?

A Yes, I told him to arrange a meeting with Frank at my suggestion.

Q After this telephone call with Mr. Allen, did you have a meeting with Mr. Frank?

A Yes.

Q When was that?

A Probably early July of 1969 or late June.

Q Who else was present?

A Mr. Stoller, Mr. Allen, Mr. Frank and myself.

Q Where was the meeting held?

A Mr. Frank's office.

Q Tell us, please what you said to each of them and what each of them said to you?

MR. FELDSHUH: I object, your Honor, on the grounds that this is not proper evidence within the scope of this indictment.

THE COURT: I am sorry, but I disagree. Go ahead.

1  
2 MR. FELDSHUH: May I have a standing objection?

3 THE COURT: Yes. Understand this, ever since  
4 our conversation in the recess, that both defendants have  
5 a continuing objection. That is clear.

6 MR. FELDSHUH: Your Honor, with regard to that  
7 colloquy, as I understood it, we had to await the opportunity  
8 when this evidence was proffered. I didn't know exactly  
9 what Mr. Gorkin proposed to do.

10 THE COURT: I am not blaming you, I am making an  
11 observation to protect your record. I understood, rightly  
12 or wrongly, but now it turns out I gather you would agree,  
13 rightly, that you on behalf of Mr. Frank and Mr. Alenstein,  
14 on behalf of Mr. Stoller, objected. I note that and it is  
15 a continuing objection.

16 Let us proceed.

17 Q Mr. D'Onofrio, tell us, please, what you said to  
18 each of those gentlemen, Mr. Stoller, Mr. Frank and Mr.  
19 Allen and what they said to you and please identify the parties  
20 speaking.

21 A I opened the conversation. I said, "Mr. Frank,  
22 your esteemed partner" -- I called him -- I can't say it --  
23 "Your esteemed partner, Mr. Stoller, has visited with the  
24 SEC and I would like Mr. Stoller to tell you what he told me  
25 yesterday in my office." So Marty looked at Phil and

1 says, "Phil, were you down at the SEC?"

2 He says yes. He said, "How did you go down,  
3 voluntarily or by subpoena?"

4 He said, "I had a subpoena."

5 And Marty says, "Did you go down with any lawyer  
6 other than ourselves? Did anybody go down with you?"

7 He says, "No, I went down by myself. I got nothing  
8 to hide."

9 He said, "What did you say?"

10 He said, "I showed them all the papers from the  
11 Bank Hoffman, all the records, etc., and told them we sold the  
12 stock for \$10 a share and anybody that can make a quick  
13 \$20,000 in one day ought to be happy with that kind of a  
14 profit."

15 He says, "What else did you say?"

16 He says, "I told them some other things about  
17 consulting, but fuck them, they don't know whether they are  
18 coming or going anyway."

19 Marty says, "What else did you say?"

20 He said, "I can't recall everything."

21 He said, "Did you tell them that the stock you  
22 bought at Bank Hofmann went into the private accounts?"

23 He said, "Of course I didn't tell them that."

24 He said, "Then you perjured yourself, you son of  
25

2 a bitch, you stupid sob, why didn't you plead the Fifth  
3 Amendment. I can tell you one thing, Jerry is represented  
4 by this office and if he is called by the SEC he will plead  
5 the Fifth Amendment. Now you have all our asses in a sling."

6 He says, "Ray, who are you using as attorney, that  
7 professor up at Yale University?"

8 I said, "Yes, Marty. I am using Professor Duke."

9 He says, "What is his feelings on Fifth Amendments  
10 in case you get a subpoena?"

11 I said, "I can only tell you, Marty, based on pre-  
12 vious experience with Professor Duke, he has had me plead  
13 the Fifth Amendment on many occasions rather than talk, so I  
14 would suspect if I got a subpoena and went down to the SEC,  
15 he would probably recommend I plead the Fifth Amendment  
16 again."

17 He says, "Well, I have no concern about Jerry  
18 because we know already what he is going to do."

19 Marty ended the conversation by saying to me it  
20 is now absolutely imperative that you get Training With the  
21 Pros. "I am not looking for any office fees, we have enough  
22 of fees in this office, we make enough of money, but in  
23 order to protect ourselves it is absolutely imperative  
24 that this firm becomes counsel for Training With the Pros  
25 during the course of this SEC investigation."

2 Q Was there any further conversation at this  
3 meeting?

4 A I don't recall.

5 Q What happened, if anything, after this meeting?

6 A I engaged Mr. Moss under duress to retain the firm  
7 of Feldshuh & Frank.

8 Q What did you tell Mr. Moss. *June 20, 1969*

9 A That at this point we are going to seal our  
10 veins from blood and he said, "I have nothing to hide,"  
11 and I said, "I don't care whether you have something to hide  
12 or not, but you are going to use the firm of Feldshuh &  
13 Frank, and they will charge practically nothing. I want  
14 to protect the company. I don't care about you and  
15 Marlin Hitchfeld being a lawyer, but you are going to be  
16 represented by Feldshuh and Frank or otherwise we are split-  
17 ting."

18 Q Let me direct your attention to approximately  
19 October of 1969. Did you have a conversation with Mr.  
20 Stoller and Mr. Allen?

21 A Yes.

22 Q Where was the conversation?

23 A At my office on 136 East 57th Street.

24 Q Was anyone else present?

25 A I believe just the three of us.



2 Q Tell us, please, Mr. D'Onofrio, what you said and  
3 what Mr. Stoller said and what Mr. Allen said.

4 A Mr. Allen opened the conversation, to the best of  
5 my recollection, by saying that Joe Bonavia has been called  
6 by the U. S. Attorneys and they are worried about him talking  
7 about Training With the Pros and some other stocks and the  
8 bank, and Phil immediately jumped in and he said "Fuck that  
9 son of a bitch, I'll bury him if he opens his mouth."

10 Jerry counteracted by saying, "Please, Phil, don't  
11 get excited, don't say anything."

12 He says, "Fuck them, if I have to --"

13 Q Who said that?

14 A Phil. He said, "Fuck them, if I have to I will  
15 hire somebody for \$15,000 and have him run over by a truck."

16 I said, "Wait a minute, Phil, I may be Italian,  
17 but this is not my nature. My walls have ears. So don't  
18 talk like that in my office. We are here, we have a  
19 problem and we will try to work it out. If it can be worked  
20 out with Joe Bonavia, fine, but I don't want to hear this kind  
21 of conversation. What are we really here for? We are really  
22 here to take care of Bonavia. Do you want to give him  
23 lettered stock or something different? "

24 Phil says, "He wants his whole half million  
25 dollars back and I am not going to give him a fuckin penny of

1 it."

2  
3 I said, "We can give him lettered stock and keep  
4 him patient in the meantime,"and the conversation ended.

5 Q Would you tell us, please, what your understanding  
6 is of lettered stock?

7 A That is stock that is legended and can't be sold  
8 freely on the open market.

9 Q When was the next time you had a conversation  
10 with Mr.Stoller?

11 A The next time I had a conversation with Mr.Stoller  
12 was in November, I believe, of that year, 1969, at my office.

13 Q Prior to your conversation with Mr.Stoller, did  
14 you meet Mr. Bonavia?

15 A Yes.

16 Q Did you have a conversation with Mr. Bonavia?

17 A Yes.

18 Q Who else was present?

19 A Myself and Mr. Bonavia.

20 MR. SORKIN: Your Honor, at this time I intend  
21 to elicit the conversation, what he mentioned at the recess.

22 THE COURT: Yes.

23 MR. SORKIN: May I proceed?

24 MR. ALENSTEIN: We will object, your Honor.

25 MR. FELDSHUH: Objection, your Honor.

1 THE COURT: Yes, you have a continuing objection,  
2 gentlemen, and I am going to take this subject to connection  
3 at this point, on the representation that Bonavia will  
4 be produced as a witness and thus will be available for  
5 examination and cross-examination.  
6

7 Go ahead.

8 MR. ALLENSTEIN: Do I understand there is going to  
9 be no evidence that either of the defendants was present at  
10 any of these conversations?

11 THE COURT: I think that is true, too, but let's  
12 go ahead.

13 Q Mr.D'Onofrio, tell us, please, what you said to  
14 Mr.Bonavia and what he said to you.

15 A Joe Bonavia came about an hour before the other  
16 meeting and he said, "Ray, I want to speak to you alone."

17 I said, "What's up, Joe?"

18 He says, "I'm worried."

19 I said, "What are you worried about?"

20 He says, "I think Phil is going to kill me. I am  
21 very much afraid of him. If I go to the <sup>garage</sup> ~~garage~~ or talk to  
22 anybody, he'll kill me. They want me to use Marty Frank as  
23 my lawyer for my problems with the United States Attorney's off

24 Q Did he say who they were?

25 A Phil and Jerry.

1 3b am rmrf 1 D'Onofrio-direct

2 Q Go ahead.

3 A And he says, "I'm scared stiff of Phil and I don't  
4 want to use Marty Frank because Marty is their lawyer and  
5 it wouldn't be in my best interests. Is there any  
6 possibility -- I trust you -- is there any possibility of  
7 you getting me a good lawyer, someone that will take care  
8 of me and protect me and have only my interests at heart?"

9 I said, "Yes, there is."

10 He says, "Will you do it right now before they  
11 come into the meeting without them knowing so at least I  
12 know and I am comfortable?"

13 I said, "Yes, I would."

14 I made a telephone call and I arranged for --

15 Q Don't tell us the conversation. Who did you call?

16 A I called Professor Duke.

17 Q Did you have a conversation with Professor Duke?

18 A Yes.

19 Q As a result of that conversation, what happened  
20 next?

21 MR. FELDSHUH: Not as a result, just what happened  
22 next.

23 A I informed --

24 THE COURT: If that is an objection, I sustain  
25 it.

1 rmrf 2

D'Onofrio-direct

2 Rephrase the question.

3 Q What happened, if anything, after this  
4 conversation?

5 A I retained Mr. Patrick Wall and when Mr. Bonavia  
6 then said how good is he, I said I used him and he just  
7 came out of Edward Bennett Williams' office, He is a  
8 young, good trial attorney and I have used him for some  
9 opinions.

10 He says, "Well, will he talk about me or anything  
11 I am doing to anyone else?"

12 I said, "I doubt it very much, but Pat Wall will  
13 take the case and you can believe and trust in me that he is  
14 a good lawyer."

15 He says, "Fine, at least I can sleep tonight that  
16 I have a good lawyer."

17 Q Did there come a time when Mr. Stoller and Mr.  
18 Allen came into that office of yours?

19 A Yes, 20 minutes later.

20 Q Did they come in with anyone else?

21 A No.

22 Q Who was present?

23 A Mr. Bonavia, myself, Mr. Allen and Mr. Stoller.

24 Q Did you have a conversation?

25 A Yes.

1 rmrf 3

D'Onofrio-direct

2 Q Tell us what you said and each of them said?

3 A The conversation was opened, I believe by Mr.  
4 Stoller. He said, "Mr. Bonavia, if you open your mouth  
5 to the grand jury or anyone else I am going to buy you.  
6 If you don't hire Marty Frank so that we can know everything  
7 that is going on, you are going to have plenty of troubles  
8 from me."

9 Joe says, "Please, don't get upset with me.  
10 I have enough problems without getting upset." Joe said  
11 to me, "Can't you hire me a lawyer?" But he knows already  
12 we had previously done so.

13 I said, "Phil, I think I can get Joe Bonavia  
14 a good lawyer to protect us," and Phil says, "Who are you  
15 going to get?"

16 I says, "I am thinking of getting Pat Wall."

17 He says, "Who is he?"

18 I says, "A young fellow just out of Edward Bennett  
19 Williams' office."

20 He says, "Will he tell us what is going on?"

21 I said, "I doubt it very much."

22 Then he says, "We have got to get Marty Frank,"  
23 and Joe says, "I don't want Marty Frank."

24 Well, he says, "If Pat Wall is not going to tell  
25 us what is going on --" and I said, "Look, Phil, Pat, I

1           rmrf 4                           D'Onofrio-direct  
2           doubt will violate the canon of ethics and tell us what  
3           is going on as to what he is doing while representing  
4           Joe Bonavia."

5                       He says, "Will he at least tell us what he has  
6           been called to the grand jury for?"

7                       I said, "I doubt it. I can only tell you we are  
8           putting him in safe hands and with a darn good criminal  
9           lawyer, which Joe needs."

10                      Phil looked at Joe and says, "I am going to  
11           tell you one thing, you son of a bitch, we have plenty of  
12           your records from Bank Hofmann. If you say anything to the  
13           grand jury about anything, about Training With The Pros  
14           or anything else, just remember that I have your records."

15           Q       Was there any further conversation?

16           A       Not that I can recall.

17           Q       Did there come a time in 1971 where you had a  
18           conversation with Mr. Stoller?

19           A       Yes.

20           Q       When was it?

21           A       February or March of 1971.

22           Q       Where was it?

23           A       At my office on 136 East 57th Street.

24           Q       Was anyone else present?

25           A       No.

1 rnr 5

D'Onofrio-direct

2 Q Tell us, please, what you said to Mr. Stoller  
3 and what Mr. Stoller said to you?

4 A Mr. Stoller said to me, "Mr. D'Onofrio, the powers  
5 that he have found out that you are going to be a  
6 chief Government witness in a coming up trial with  
7 Supreme Court Judge Pfingst."

8 I said, "Your powers that he are correct."

9 He says, "The powers to be also tell me that at  
10 this trial you are going to be asked questions about Training  
11 With The Pros and some other stocks and Swiss banks."

12 I says, "Your powers to be may be correct."

13 He says, "Mr. D'Onofrio, the powers to be also  
14 tell me that you will probably fink on us and talk about  
15 Training With The Pros and other clients," I says, "Your  
16 powers to be are wrong, I will not fink on you, I will  
17 not talk about them."

18 He says, "Well, Mr. D'Onofrio, the powers to be  
19 tell us that you may not have any choice, that if you are  
20 asked a question you could be put in jail if you do not  
21 answer."

22 I says, "Then, Mr. Stoller, the powers to be are  
23 wrong again, because I'll go to jail."

24 He says, "Well, I am going to tell you something,  
25 Mr. D'Onofrio, if you mention anything at that trial about



1 rmrf 6 D'Onofrio-direct

2 Phil, Jerry, Training With The Pros or anything else,  
3 I am going to bury you."

4 I looked at him and said, "You are going to bury  
5 me?"

6 He says, "Yes."

7 I says, "You personally, physically?"

8 He says, "If not me, someone else."

9 Q What did you do then?

10 A I rapped him in the mouth.

11 Q What happened then?

12 A I walked out of the room.

13 Q Did there come a time when you had a conversation  
14 with Mr. Frank -- withdrawn.

15 Did there come a time when you overheard a  
16 conversation between Mr. Stoller, Mr. Frank and Mr. Herbert?

17 A Yes.

18 Q When was that?

19 A When I was a fugitive from justice.

20 Q And when was that?

21 A I became a fugitive -- excuse me for thinking  
22 out loud --

23 MR. FELDSHUH: I object. The question was when  
24 and where.

25 A I am trying to think. I thought out loud. I'm

1 || mrfr 7 D'Onofrio-direct

2 || sorry.

3 Q Please think to yourself --

4 A Around December of '72 or January of '73, or  
5 November or December of '72.

6 Q Where were you?

7 A In Zurich, Switzerland.

8 Q Did you overhear a conversation between Mr.  
9 Stoller, Mr. Herbert and Mr. Frank?

10 THE COURT: Before we get to that, you are  
11 in Zurich. Where in Zurich?

12 THE WITNESS: At my offices on Schansengraben 23.

13 THE COURT: At the offices of Herbert and D'Onofrio

14 AG.

15 MR. FELDSHUH: Your Honor, may I at this time make  
16 a very emphatic objection to the course of this testimony  
17 because I deem it most highly prejudicial. I believe it  
18 is not an object of this conspiracy as charged in this  
19 indictment with respect to any concealment or coverup.  
20 This has nothing to do with the manipulation or sale of  
21 Training With The Pros and I respectfully submit we are  
22 far beyond the time capsulated in the indictment.

23 THE COURT: I disagree. Exception to your  
24 client. Next question.

25 Q Mr. D'Onofrio --

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D'Onofrio-direct

2 MR. ALENSTEIN: I would like to join in that  
3 objection for the record.

4 THE COURT: You have a continuing exception to  
5 all of this.

6 Q For Mr. Feldshuh, would you repeat where that was?

7 A Schansengraben 23, in Zurich, Switzerland,  
8 at my offices, Herbert & D'Onofrio, AG.

9 Q Tell us, please, what you overheard and please  
10 identify the speakers?

11 Mr. Feldshuh would like us to fix the room you  
12 were in.

13 A We had -- we don't have rooms by numbers. I was  
14 in the utility room. They were in a secondary conference  
15 room and the transom was opaque glass, like in a bathroom,  
16 where you cannot see through, only a shadow, but it doesn't  
17 go to the ceiling and you can hear everything over it.

18 THE COURT: Who is they?

19 THE WITNESS: Mr. Frank and Mr. Stoller and Mr.  
20 Herbert.

21 Q Tell us, please, Mr. D'Onofrio, what each of them  
22 said?

23 A The first thing Mr. Stoller did was point to  
24 another room and said, "I know you bastard D'Onofrio  
25 you are in there, I know you are in there, I know you are

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2 listening to us and I even know where you are living in  
3 Switzerland, the hotel you are living at."

4 And he gave the name of the hotel which is not  
5 where I was living.

6 Q Was Training With The Pros mentioned?

7 A Yes, the whole conversation.

8 Q Tell us what was said?

9 A Then Mr. Frank told Phil to calm down. He  
10 says, "Freddie," meaning Mr. Herbert, "We have a big problem."

11 Freddie says, "What is the problem, Mr. Frank?"

12 He says, "Freddie, you and your partner,  
13 Mr. D'Onofrio, stole over \$40,000 from me," Mr. Frank says.

14 Freddie says, "What?"

15 He says, "You heard me, you stole over \$40,000  
16 from me."

17 Freddie says, "Look, Ray and I have been  
18 accused of a lot of things in our lives but to steal \$40,000  
19 from a partner is not part of our MO. The thousand shares  
20 of stock with the Pros," he said --

21 Q Who is he?

22 A Mr. Frank, "That were supposed to go into my  
23 account and be sold out at \$50 is not in my account and  
24 the bank is giving me margin calls on another security."

25 Freddie says, " I know that. I talked to the

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2 bank today before you got here. They called me."

3 He says, "I have no control over that, I am not  
4 with the bank any more."

5 So Marty says, "But, Freddie, you were present when  
6 the boys promised me that thousand shares of stock to be  
7 sold out at 50."

8 He says, "Wait a minute, I was not present. I  
9 was never present. I knew about it, I knew there was an  
10 arrangement to be made, but I was not present at such a  
11 meeting. I wasn't even in the United States at that time."

12 Marty says, "Nevertheless, either you or Ray or  
13 both of you when the stock was transferred did not put it  
14 in my account. You stole it."

15 He says, "Don't accuse me of being a thief."

16 Phil said, "You are both thieves, you and Ray."

17 Freddie said to Phil, "If anybody is a thief,  
18 Phil, it is you. You have the responsibility."

19 He says, "Besides, Marty, you are not here for  
20 the \$40,000, you are over here to get Phil squared away on  
21 his income tax returns with Bank Hofmann."

22 He says, "The bank tells me you are threatening  
23 them you are going to sue them all over the lot in Switzerland  
24 if they don't put the money into your account that we were  
25 supposed to have given to them and if they don't give

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2 Phil letters that he can give the Internal Revenue supporting  
3 phone consulting fees," and he says, "You are not going to  
4 get these letters out of the bank, Marty. Jerry may  
5 have gotten one in the past but you won't get them from  
6 Phil Stoller, I will tell you now. Either you or your  
7 partner Ray get that goddam money back into my account quick  
8 like lightning --

9 Q Who is saying that?

10 A Mr. Frank. He says, "Unless that money is in my  
11 account like lightning that bank will have a hell of a lot  
12 of problems from me."

13 MR. FELDSHUH: Your Honor, I move to strike  
14 all this testimony on the grounds previously stated by me  
15 and I ask that a direction be given to the jury to disregard  
16 it entirely.

17 MR. ALLENSTEIN: I join in that.

18 THE COURT: No, I add here to my previous ruling.  
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2 Q Mr. D'Onofrio, was there any further conversation  
3 with respect to Training With The Pros?

4 MR. FELDSHUH: I object to that, your Honor.  
5 This was a conversation far beyond Training With The Pros.

6 THE COURT: That doesn't suit you at all because  
7 that is not the point. He is asking whether there was any  
8 other conversation about Training With The Pros and I think  
9 it is a proper limitation in the context of this case at  
10 this point. Go ahead.

11 A No.

12 Q I am sorry, I didn't hear you.

13 A No.

14 Q Did there come a time when you had a telephone  
15 conversation with Mr. Frank?

16 A Yes.

17 Q When was that?

18 A I had a telephone conversation with Mr. Frank  
19 that evening, of the same, November, December of 1972,  
20 about three or four hours later.

21 Q Where were you at the time?

22 A At my home in Zurich, on Feurselibistrasse.

23 Q Where was Mr. Frank?

24 A Staying at the Baur au Lac Hotel.

25 Q Could you tell us, please, Mr. D'Onofrio, what

you said to Mr. Frank and what he said to you?

A I reached Marty Frank on the phone and said, "Hi Marty, this is Ray."

He says, "How are you, Ray? Where are you calling from?"

I said, "I am calling from London,"

He said, "How is the weather over there, is it snowing and dewy?"

I said, "Not at all."

He said, "It sounds like you are right around the corner."

I said, "These transatlantic phones give the sound like you are right close by."

He says, "How have you been?"

I said, "Fine."

I says, "Is your partner with you or is he indisposed?"

I said, "If he is, fine, put him on the phone."

He says, "He is not here."

"Then I will talk to you, Marty."

I said, "Marty, I received a phone call today from Miss Poole --"

Q Don't tell us what was said between you and Miss Poole, just tell us what you told Mr. Frank.

A I said, "Marty, you have made some accusations



2 in my office today, A, that I am a thief, B, that I stole  
3 40 some odd thousand dollars from you, and I am very upset  
4 about it. You know darn right and well that I never  
5 promised you any part of that one thousand shares. My  
6 only commitment was part of the \$15,000" --

7 MR. FELDSHUH: Would you keep your voice up, please?

8 THE WITNESS: Yes, I think I am talking loud,  
9 but I will try to talk louder.

10 A I said, "Marty, you know very well I didn't  
11 have any part of the commitment of that one thousand  
12 shares of stock. My only commitment was to contribute  
13 towards the \$15,000 and that your partner that is with you,  
14 Mr. Stoller, and Mr. Allen had promised you the one thousand  
15 shares, and if the thousand shares of stock did not get  
16 into your account and did not get sold out and you did not  
17 get your \$40,000 or \$45,000 profit, why are you blaming it  
18 on me, just because I am a fugitive and I can't protect  
19 myself?"

20 He says, "No, Ray, you have the story all wrong.  
21 I never said any such thing."

22 I said, "Look, Marty, I believe the people  
23 who told me and I don't believe you. Secondly, you were  
24 at the bank today and you told the bank that I owed you  
25 \$100,000 in legal fees and that I was a no good SOB and

2 that I was greatly indebted to you. You know this is a  
3 goddam lie because I don't owe you any \$100,000 in legal  
4 fees."

5 He says, "Ray, I just said that in order to keep  
6 the story straight."

7 I said, "Marty, let me tell you something here  
8 and now, to my knowledge this is your first visit to  
9 Switzerland -- I may be wrong -- why the hell you ever  
10 came over to rescue Phil Stoller, that sone of a bitch,  
11 is beyond me, that he could drag you over. Whatever he  
12 holds over you to drag you over, I can't figure, but you get  
13 your ass on an airplane tomorrow and get back to the  
14 United States. You leave Bank Hofmann alone. You can  
15 tell Phil at the same time that he better not cause any  
16 more waves at Bank Hofmann or any place else for me  
17 because, as you know, I have been trying to work out a  
18 deal with the United States Government."

19 He says, "Yes, I heard about that and I think  
20 you are wrong. You shouldn't be trying to negotiate with  
21 the United States Government from 3,000 miles away. In  
22 fact, you shouldn't be negotiating at all, you are the  
23 laughing stock of the Southern District by calling them and  
24 writing them and negotiating some sort of an agreement."

25 I said, "Look, that is my business. They offered

2 to meet me in a neutral country and I am close to making  
3 an arrangement with the United States Government."

4 He says, "I think you are totally wrong."

5 I said, "I am coming back to the United States and  
6 tell your partner to remember I will be coming back."

7 Q Have you been convicted of the crime of bankruptcy  
8 fraud --

9 MR. FELDSHUH: I object to that. Impeaching his  
10 own witness.

11 THE COURT: I am going to sustain that as to form.  
12 I don't think you have to lead him here, I trust.

13 Q Have you been convicted of any crimes?

14 A Yes.

15 MR. FELDSHUH: Objection.

16 THE COURT: That objection is overruled.

17 Q How many indictments have you pleaded guilty  
18 to in the Southern District of New York?

19 MR. FELDSHUH: Standing objection, your Honor.

20 THE COURT: I got you the first time. I said  
21 earlier that I was going to allow this later on and now  
22 I am allowing it. Go ahead.

23 A I pleaded guilty to four indictments involving  
24 stock manipulation in this district of the United States.

25 Q Were you ever convicted of bankruptcy fraud?

2 A Yes. I pleaded guilty to one count of conspiracy  
3 of bankruptcy fraud in the Eastern District of New York in  
4 1971.

5 Q Do you know, Mr. D'Onofrio, how many years exposure  
6 you face in prison?

7 A Yes, I do.

8 Q How many?

9 MR. FELDSHUH: I object to that question, your  
10 Honor.

11 MR. ALENSTEIN: Objection, your Honor.

12 THE COURT: Well, I don't think we need to get  
13 the years in prison.

14 I gather from what this question implied, you  
15 still haven't been sentenced in some of these cases, if not  
16 all of them?

17 THE WITNESS: That is correct, your Honor.

18 THE COURT: Am I correct in understanding you to  
19 say there are five cases at least in which you are awaiting  
20 sentence?

21 THE WITNESS: Four, sir.

22 Q Have you been sentenced on the bankruptcy fraud?

23 A Yes.

24 Q What is your understanding with respect to your  
25 cooperation and testimony here today?

MR. ALENSTEIN: Objection.

THE COURT: Yes, I think there is a better way of putting that question. I will sustain that as to form.

MR. SORKIN: Your Honor, quite frankly, I am sure that is the way I have asked it in the past and I don't know the other way to do it.

Q Have you promised anything by the Government with respect to your testimony today?

A No.

Q What have you been told?

A I have been told that if I lie or perjure myself, I will not only be prosecuted for the four crimes I have pled guilty to but for the crime of perjury and also for at least five, six or seven other criminal acts I have committed and haven't been indicted for.

Q Were you a fugitive at one time?

MR. FELDSHUH: Objection.

THE COURT: He has already testified that he was. So for quite different reasons I gather than Mr. Feldshuh has in his mind, I say to you, Mr. Sorkin, why do we get into this since he has already told us that.

Q Were you extradited?

A From a foreign country?

Q Yes, sir.

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A The United States Government succeeded in having me captured in a foreign country and arranged to extradite me.

Q Were you extradited?

A No.

Q How did you return to the United States?

A I gave up myself voluntarily.

MR. SORKIN: Your Honor, I have no further questions.

MR. GOULD: Shall I go ahead with cross examination, your Honor?

THE COURT: Are you ready?

MR. GOULD: Yes, sir.

THE COURT: Very good.

CROSS EXAMINATION

BY MR. GOULD:

Q What is your business?

A Today?

Q Yes, sir, today.

A I am an international general manager for a company known as Galco Leasing Systems.

Q Do you get a salary?

A Yes, I do.

Q How long have you had that job?

1

2

A Since last year.

3

Q When last year?

4

A Last August, I would imagine.

5

Q August 1973?

6

A Yes.

7

Q Did you get any money from the Government since

8

1973?

9

A I get witness fees and travel expenses.

10

Q Nothing else?

11

A Yes, I did get money from the Government once or

12

twice.

13

Q How much money have you got from the Government?

14

A I got 65 cents once from Ira Lee Sorkin in

15

exchange for a pastrame sandwich and a hot cup of tea and

16

a free meal at a meeting with four FBI agents.

17

Q That is all you got?

18

A Witness fees and per diem expenses, yes.

19

Q When did you start cooperating with the Government?

20

At what point in your career?

21

A In my life or in this case?

22

Q In your life.

23

A I can't remember the exact date, but I think it

24

could be back in 1970, in the summer.

25

Q Summer of 1970, right? During the year 1970, from

the summer on, did you have any source of income?

A Yes.

Q What was it, sir?

A From stock manipulations.

Q Did you have a job with anybody?

A I had my own firm.

Q What was the name of that?

A I had two firms, one known as Herbert D'Onofrio AG in Switzerland and D'Onofrio Hirschbaum & Company in New York.

Q During the year 1970, from the summer on, your income was derived from stock manipulations?

A Most of it. Some of it legitimately, but very little.

Q While you were cooperating with the Government you were still getting money from stock manipulations?

A That is correct.



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Q Did you tell them you were still engaged in stock manipulations?

A At that time, back then, no.

Q What was the legitimate part of your income in 1971?

A Merger and acquisition work.

Q You mean you were an agent who put together deals?

A That's right. a deal maker.

Q Did you put together any such deals in 1970?

A I can't recall at this moment, but I suspect that I did.

Q You have no recollection whether in the year 1970 you put together --

A I just said I suspect that I did --

Q I heard you, but I want you to search your mind now and see if you can remember the name of any deal that you put together in 1970?

A In 1970 I put the Galco Company into Voraire --

Q Into what?

A Voraire into Galco, excuse me.

Q Did you put Galco into that?

A Voraire.

Q That was a merger?

A Yes.

Q Did you get any money for it?

rmb-2

D'Onofrio-cross

1  
2 A I got a lot of stock. I very rarely got paid  
3 money, only lettered stock.

4 Q Did you sell the stock?

5 A No.

6 Q You still have it?

7 A I have some of it left.

8 Q What happened to the rest of it?

9 A Some of it I transferred to other inventors and  
10 principals in the co mpany for services rendered.

11 Q So now some time in 1970 you did do a merger,  
12 right?

13 A Yes.

14 Q And it was Galco into Voraire, but you didn't get  
15 any money from it?

16 A No, I put money in.

17 Q You didn't get any income from it?

18 A No.

19 Q So when you told me before you got some legitimate  
20 income in 1970, that was an error?

21 A I call consideration an income. Stock is considera-  
22 tion. Consideration, to me, is income.

23 Q That is what you meant whenyou said income?

24 A You are talking dollars?.

25 Q Dollars.

1 A Dollars, I cannot recall. I had fees coming  
2 in from an insurance company, I had fees coming in from  
3 a computer technology firm, \$2000 a month, \$2000 a month  
4 from one insurance company for advising and consulting them,  
5 another \$250 a month from a protective agency that has armed  
6 guards. I had a number of fees coming in on a monthly basis  
7 but I did not do the bookkeeping so I cannot recall.  
8

9 Q I understand. I am only confining myself to  
10 1970. We have it then that in 1970 you got \$2-00 a month  
11 from an insurance company, correct?

12 A Mr. Gould --

13 Q Just yes or no, Mr. D'Onofrio. Did you or did you  
14 not get \$2000 a month from an insurance company?

15 A To the best of my recollection, although I didn't  
16 handle my books --

17 Q Yes or no, under oath. Did you get \$2000 a month  
18 from an insurance company?

19 A I can't answer yes or no because I am not a book-  
20 keeper.

21 Q Then you --

22 MR. SORKIN: He said he doesn't know and it  
23 can't be answered yes or no, your Honor.

24 MR. GOUOD: I did not say he does know. He  
25 said he got \$2000 a month from an insurance company, your

1 rmb-4

D'Onofrio-cross

2 Honor.

3 THE COURT: Gentlemen, the jury will decide this  
4 matter and not you and not I. Let's go ahead. The objection  
5 is overruled.

6 Q What was the name of the insurance company  
7 from which you just told the jury you got \$2000 a month?

8 A Cosmopolitan Life Insurance Company.

9 Q Where are they located?

10 A I believe at the time they were located in Harris-  
11 burg.

12 Q Harrisburg, Pennsylvania?

13 A Pennsylvania.

14 Q And for what services did you get the \$2000 a  
15 month?

16 A I had men on my staff. They performed the services.

17 Q You don't know what the services were?

18 A They performed consulting services.

19 Q And you got paid for it, right?

20 A The firm got paid.

21 Q What firm?

22 A D'Onofrio, Kirschbaum & Company.

23 Q Where was the firm of D'Onofrio, Kirschbaum located?

24 A 136 East 57th Street.

25 Q It had an office?

rmb-5

D'Onofrio-cross

1

2

A Yes.

3

Q What was the business of D'Onofrio, Kirschbaum?

4

A Mergers, acquisitions, mortgage financing and shells.

6

Q Now would you be good enough to tell us what services D'Onofrio, Kirschbaum performed for Cosmopolitan Insurance Company?

8

9 A They advised them as to some of their subsidiaries,  
10 as to whether they should spin them off or acquire companies.  
11 They advised them as to renegotiating their computer lease,  
12 which was too high. They seeked out mortgage financing  
13 for their new buildings and new offices, amongst other things.  
14 Normal consulting work.

15

16

Q But you didn't do the work, other men did the work?

17

A I was the chairman of the board.

18

Q Did you get a salary from D'Onofrio, Kirschbaum?

19

A I drew some money, about \$300 a week.

20

Q How much?

21

A About \$300 a week. I don't recall.

22

Q Did you declare that as income in 1970?

23

A I have not declared that as income, no.

24

25

Q Did D'Onofrio, Kirschbaum file an income tax return with the United States Government in 1970?

rmb-6

D'Onofrio-cross

1  
2 A I don't know. I would have to ask my accountant.

3 Q Ask whom?

4 A My accountant.

5 Q You were the chairman of the board, you said?

6 A But I am not the officer.

7 Q You are not the officer?

8 A No. Presidents and secretaries sign.

9 Q You know they signed it?

10 A I don't know.

11 Q Did you ask?

12 A No.

13 Q Were you a stockholder?

14 A Yes.

15 Q How much stock did you own?

16 A Almost the whole company, about 95 per cent or 85  
17 per cent.

18 Q So we have it, sir, that you owned 95 per cent  
19 of the stock of D'Onofrio, Kirschbaum, you were the chairman  
20 of the board, but you cannot tell me whether you filed an  
21 income tax return for D'Onofrio, Kirschbaum?

22 A I would think we did, but I cannot be sure.

23 Q Would you be good enough to tell us the name of the  
24 accountant to whom you just referred?  
25

1 rmb-7

D'Onofrio-cross

2 A Martin Goldberg.

3 Q Would you be good enough to tell us where Mr.  
4 Martin Goldberg resides?

5 A South Grove Street, Freeport, New York.

6 Q You have never ween an income tax return for  
7 D'Onofrio, Kirschbaum?

8 A I have seen some prior -- you are talking about  
9 1970. I saw one in 1969. I don't recall seeing '70 and '71.

10 Q So that --

11 A I would assume they were filed, but I don't  
12 recall.

13 Q But you did not file personally an income tax  
14 return for the year 1970?

15 A No.

16 Q So that the \$300 a month or whatever you got, you  
17 paid no tax on that?

18 A That's correct.

19 Q You just put the money in your pocket?

20 A Correct.

21 Q In 1971 what was your business?

22 A Same business, but mostly manipulations.

23 Q You mean you kept on with D'Onofrio, Kirschbaum  
24 in 1971?

25 A Yes.

1 rmb-8

D'Onofrio-cross

2 Q What business did you do in 1971?

3 A You would have to refer to the president of the  
4 company because I stayed mostly away from the business and  
5 was mostly in Europe.

6 Q You had nothing to do with the affairs of the  
7 company?

8 A I had a little to do, but I had very little to do.

9 Q You don't know what business they did in 1971?

10 A I said you would have to refer to --

11 Q I don't care what you said. I want to know what  
12 you know about the business of D'Onofrio, Kirschbaum in 1971.

13 A I know very little.

14 Q Don't know whether they were engaged in any kind  
15 of business at all?

16 A I was away most of the time in Europe.

17 Q All of 1971?

18 A I said most of the time.

19 Q How much of 1971?

20 A At least half the year, traveling.

21 Q Six months. And six months you were here, right?

22 A That's correct.

23 Q And six months that you were here did you ever  
24 set foot into the offices of D'Onofrio, Kirschbaum?

25 A Not too often.



1 rmb-9

D'Onofrio-cross

2 Q How many times?

3 A I cannot recall.

4 Q Three or four?

5 A 10 or 12.

6 Q And you were still the chairman of the board?

7 A That's correct.

8 Q And you still owned 95 per cent of the company?

9 A That's correct.

10 Q And you walked in and they still had an office?

11 A Yes.

12 Q And there were people sitting at the desks?

13 A Yes.

14 Q And there were people doing things?

15 A Yes.

16 Q And you didn't know what it was they were doing?

17 A Had no interest in it.

18 Q You didn't care to ask?

19 A Didn't care at all.

20 Q Did you get any money from D'Onofrio, Kirschbaum  
21 during this period when you didn't care what they were doing?

22 A I don't recall.

23 Q Do you have an income tax return for 1971?

24 A No, I don't.

25 Q You don't know whether you got any money from them?

1

rmb-10

D'Onofrio-cross

335

2

A I said I don't recall.

3

Q Don't you keep any kind of records --

4

A No.

5

Q Why not?

6

A I don't have to answer why not --

7

Q Yes, you do.

8

A I don't.

9

Q You don't?

10

A I don't.

11

Q Then I suggest to you you don't because you don't

12

want anybody to know what you got, isn't that right?

13

A Are you suggesting to me an answer?

14

Q Yes, I am suggesting --

15

A I am suggesting that your answer is wrong.

16

Q Then you tell me what the right answer is.

17

A I don't know what my answer is, but it is not what

18

your answer was.

19

Q Did you have any income in 1971?

20

A Yes, a lot of income.

21

Q From what?

22

A Stock manipulations.

23

Q Like what?

24

A You mean the income?

25

Q Yes, how much?

1

2

A A half a million dollars or more.

3

Q In one year, a half million dollars?

4

A Maybe close to a million.

5

6

Q Well, somewhere between a half million and a million dollars is what you made in stock manipulations in 1970, right?

7

8

A Yes.

9

10

Q And we know you didn't pay any income tax on it, right?

11

A That's correct.

12

Q And we know you didn't file any return?

13

A That's correct.

14

Q Where is the money that you made?

15

A I lost it all in bad deals.

16

Q Where, what bad deals did you lose it in?

17

18

A I lost 600,000 of it in a deal called Devon, International.

19

Q You were a stockholder in Devon?

20

21

A No. I bought stock in the open market and got fooled. It is a con man fooling a con man.

22

23

Q You lost \$600,000 in something called Devon, International, and you tell us you lost it by buying stock of that company?

24

25

A Yes, with an agreement to buy back that was never

1 rmb-12

D'Onofrio-cross

2 enforced.

3 Q Did you buy it through a brokerage firm?

4 A Yes.

5 Q What brokerage firm?

6 A Bank Hofmann that bought it through another broker-  
7 age firm that I don't know --

8 Q Do you have a single piece of paper that shows  
9 you bought \$600,000 worth of stock of Devon?

10 A I don't know. I don't think so, but I could, but  
11 I am not sure.

12 Q You got a confirmation on every purchase?

13 A I don't have any records from Bank Hofmann.

14 Q But you got from Bank Hofmann a confirmation --

15 A You mean at the time?

16 Q Yes.

17 A At the time, yes, but I don't have those records.

18 Q You don't have a single piece of paper now to show  
19 that you really made all this money and lost \$600,000 in  
20 Devon?

21 A No.

22 Q Nothing?

23 A No.

24 End 4B

25

1 gab-1  
2 Q You told us that there was an agreement to buy the  
3 stock back?

4 A Yes.

5 Q That was a written agreement, wasn't it?

6 A Yes.

7 Q Where is it?

8 A Mr.Frank's office has it.

9 Q Mr.Frank's office?

10 A Yes, I --

11 Q Did you give it to them?

12 MR. SORKIN: Your Honor, I think he wasn't finished  
13 answering that question.

14 MR. GOULD: I think he was. I don't mean to cut  
15 him off.

16 THE WITNESS: You do cut me off.

17 THE COURT: Gentlemen, let's not argue about  
18 it. You say you were cut off?

19 THE WITNESS: Yes, I was.

20 THE COURT: What were you cut off from saying?

21 THE WITNESS: He asked me where is the papers on --  
22 can you read back the question?

23 THE COURT: Yes.

24 (Question read.)

25 A Meaning Feldshuh and Frank?

2 Q Yes.

3 A I retained the firm of Feldshuh & Frank through  
4 Bank Hofmann to try to recover the losses I had made on  
5 Devon, International.

6 Q Did you do that in writing? Did you write them?

7 A Bank Hofmann wrote them at my request and paid  
8 them fees from Bank Hofmann that were drawn out of my private  
9 account.

10 Q Do you have a single piece of paper in your posses-  
11 sion which relates to your transaction with Feldshuh &  
12 Frank?

13 A Yes, I may have, but I don't know.

14 Q Where is it?

15 A The Government may have it. I am not sure.

16 MR. GOULD: Would you be good enough, Mr. Sorkin,  
17 to produce that piece of paper?

18 MR. SORKIN: Your Honor, I would be happy to  
19 look for it. I can't produce it right now. It may be in  
20 my office. I will look for it.

21 THE COURT: All right.

22 MR. GOULD: Very good. When the process of  
23 search is finished, I ask that counsel would advise us.

24 MR. SORKIN: I will advise you, Mr. Gould, and  
25 the Court, yes.

1 gab-3

D'Onofrio-cross

2 MR. GOULD: Thank you very much.

3 Q In going back to your financial affairs in 1971,  
4 you have told us that you made somewhere between half a  
5 million and a million dollars, but you lost it in Devon,  
6 right?

7 A Amongst others. That was only one I mentioned.

8 Q I see. You lost \$600,000?

9 A Yes. Half was Mr. Weissinger's, one of the other  
10 clients, and half was mine. I lost about \$320,000, and he  
11 lost 300-some odd thousand. That is why we hired the firm of  
12 Feldshuh & Frank.

13 Q Was Weissinger your client?

14 A No, at the time he was Mr. Stoller's client. He  
15 later became more friendly with me.

16 Q He became your friend, and you and he were in that  
17 deal?

18 A And we lost our money together. Being Mr. Weissinger  
19 was a client of Feldshuh & Frank, and I was a client of  
20 Feldshuh & Frank, we both decided to let them represent us.

21 Q Mr. Stoller was not in the Devon deal, was he?

22 A Absolutely not, no.

23 Q It was just you and Weissinger?

24 A We bought stock. We thought we would make money  
25 and we lost.

1 gab-4

D'Onofrio-cross

2 Q You didn't tell Stoller about it?

3 A We didn't tell Stoller about it.

4 Q Weissinger was Stoller's client?

5 A No longer. He didn't like Stoller.

6 Q He liked you now?

7 A He liked me now, yes.

8 Q You and he went into this?

9 A He and I lost money together, yes.

10 Q I beg your pardon?

11 A Then he and I lost money together.

12 Q I see. All of the money that you made in these  
13 manipulations got lost, right?

14 A No, I didn't say that.

15 Q I misunderstood you?

16 A You said that.

17 Q I didn't say it, I asked you. You just listen  
18 to me carefully, the way you listed to Mr. Sorkin.

19 MR. SORKIN: I object to this. Mr. Gould is putting  
20 a fact in his question which is not in evidence.

21 THE COURT: We will disregard that and start over  
22 again.

23 Q You hear me all right, don't you?

24 A Very well, sir.

25 Q Good. Now, sir, in addition to the money that



1 you lost in Devon -- let me go back. I will withdraw that.

2  
3 In 1971 I got it you made somewhere between half  
4 a million and a million dollars, right?

5 A Yes.

6 Q In 1972 what was your source of income?

7 A I don't remember if I did any manipulations in '72.  
8 I don't think that I did. I became a fugitive mid-year  
9 and prior to that my whole year was occupied in trials over  
10 in the Eastern District.

11 Q In 1972?

12 A '71 -- '71 and up to '72, my time was involved  
13 mostly in litigation.

14 Q Litigation in which you were a participant?

15 A That's correct, sir.

16 Q What was your source of income in 1972?

17 A Money left over from my previous manipulations  
18 in Europe.

19 Q Were you still getting your \$2000 a month from the  
20 Cosmopolitan?

21 A I have no knowledge. I already answered you, sir.

22 Q I am sorry, I didn't ask it.

23 In '72 were you getting \$2000 a month from  
24 Cosmopolitan Insurance Company?

25 A I answered you that even in '71 I had no knowledge,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
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15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

so I certainly didn't have any knowledge of '72.

Q In '71 you got nothing from D'Onofrio, Kirschbaum, correct?

A I am sorry. Would you please repeat the question, sir?

Q In '71 did you get any income at all from the firm of D'Onofrio & Kirschbaum?

A I don't recall, sir.

Q No recollection?

A No, sir.

Q What was the name of the president of the company?

A Richard J. Kirschbaum.

Q Was he a friend of yours?

A Yes.

Q You had made him president, hadn't you?

A That is correct.

Q You put him in the job?

A That is correct.

Q You still owned 95 per cent of the company?

A 80 or 95 per cent. I am not sure.

Q Don't you remember?

A No.

Q Didn't you ever ask Mr. Kirschbaum of D'Onofrio & Kirschbaum what is going on with my company?

gab-7

D'Onofrio-cross

1

2

A No, not really.

3

Q Not interested?

4

5

A Not interested at all. I was interested in the  
big money manipulations.

6

7

Q D'Onofrio & Kirschbaum was getting \$2000 a month  
out of an insurance company, wasn't it?

8

A I had no interest in that at all.

9

Q Couldn't care less?

10

A Couldn't care less.

11

12

Q So to this day you don't know what D'Onofrio &  
Kirschbaum took in in '70, '71, right?

13

A No knowledge.

14

Q Is the firm still flourishing?

15

A It exists as a shell company.

16

Q You own it still?

17

A Yes, sir, I do.

18

Q Do you have the corporate papers?

19

A I have the corporate books.

20

Q I see. Do you have the income tax returns?

21

A No, I do not.

22

Q What corporate books have you got?

23

A Just a kit, a Blumberg kit.

24

Q With no other papers?

25

A There may be some resolutions in there as to where

gab-8

D'Onofrio-cross

1 we bank, whatever was kept up by the attorney.

2  
3 Q What became of the corporate books and records  
4 of D'Onofrio & Kirschbaum?

5 A I told you, I have them.

6 Q But they had books of account, didn't they?

7 A Oh, they were all -- when I became a fugitive, Mr.  
8 Kirschbaum told me that Mr. Frank asked him to deliver all  
9 my books, records and Swiss bank records to his office, and  
10 verified it with me in Switzerland that he had delivered it  
11 all to Marty Frank for my protection.

12 Q Kirschbaum told you that he had delivered them?

13 A That is correct.

14 Q Where did Mr. Kirschbaum live?

15 A He was maintaining the office. He was the president.

16 Q Where is he now?

17 A I have no idea.

18 Q How long since you have seen him?

19 A About a year.

20 Q And you have no idea where he is?

21 A No, sir, I do not.

22 Q When was it he told you that the records of  
23 D'Onofrio & Kirschbaum had been delivered to Marty Frank?

24 A When he visited me in Switzerland I was a fugitive  
25 in November or December of '72.

1 gab-9  
2 Q When he told you that, it was just you and he  
3 together?

4 A And Mr. Herbert.

5 Q Do you remember what Kirschbaum said to you back  
6 there in '72 and you said to Kirschbaum?

7 A Yes. I told --

8 MR. SORKIN: I object. I don't see the relevance  
9 of the conversation between Mr. D'Onofrio.

10 MR. GOULD: It is another matter entirely, your  
11 Honor.

12 THE COURT: Go ahead.

13 Q Do you remember what you said to Kirschbaum and  
14 Kirschbaum said to you, the exact words that were used about the  
15 delivery of the books to Marty Frank?

16 A Not the exact words, but context probably.

17 Q Substance?

18 A Substance probably.

19 Q Is it generally true of conversations that you  
20 had in '72 that you remember the substance?

21 A Generally if something stands out in my mind that  
22 is of particular importance, yes. If it is incidental,  
23 I probably wouldn't remember the substance.

24 Q But you remember the exact words that were used  
25 in conversations in '72?

gab-10

D'Onofrio-cross

1

2

A Not in this conversation, no.

3

Q But some other conversations?

4

A But some other conversations, yes.

5

Q What conversations that you had in '72 can you  
remember the exact words?

7

A Well, exact words is a pretty difficult thing,  
Mr. Gould. I can't say that any person can ever remember  
what they said yesterday exactly, at least I can't exactly.

10

Q How about '69, do you remember exact words in '69?

11

A Exactly not, no.

12

Q How about exact words in '68, do you remember that?

13

A I said not even exactly yesterday. Not even  
exactly when I was sitting here yesterday could I remember  
exactly.

16

Q Just --

17

A Unless I memorized it.

18

Q I see. Do you sometimes memorize it?

19

A I never memorized. It is one of my faults.

20

Q You have a good memory?

21

A Do I have a good memory?

22

Q Yes.

23

A Is that a statement or are you asking me a question?

24

Q I am asking you a question.

25

A I don't know. I would have to subject that to

gab-11

D'Onofrio-cross

other people who know me.

Q I see. Have you ever actually made an effort to memorize things?

A No, not really.

Q Have you ever --

A To recall, not to memorize.

Q Have you ever gone through the process when you went over the same story three or four times?

A Yes.

Q How often have you done that?

A I don't know. I couldn't hardly guess.

Q The testimony that you have given in this case --

A Yes, sir.

Q -- your direct testimony, how many times did you go over that?

A About three or four times.

Q When --

MR. FELDSHUH: About how many times?

THE WITNESS: About three or four times.

Q When three or four times?

A Over -- I think four Saturdays in a row, the last four weeks or so.

Q Four Saturdays in a row. How many hours did you take on each of these Saturdays?

1 gab-12 D'Onofrio-cross 349  
2 A I may be wrong on four Saturdays, maybe three.  
3 About four hours, three or four hours. But not all on this  
4 testimony.

5 Q On other things?

6 A On some other things.

7 Q One of those Saturdays was early in August,  
8 wasn't it?

9 A I don't recall. Early in August?

10 Q Don't you remember being in this building on a  
11 Saturday morning in August?

12 A I don't recall.

13 MR. SORKIN: Was that August of this year, Mr.  
14 Gould?

15 MR. GOULD: August 1974.

16 MR. SORKIN: Thank you.

17 A I don't remember.

18 Q Don't you remember ever being in this building  
19 on a Saturday in August 1974?

20 A Yes, on a Saturday in August, but I don't remember

21 Q One Saturday or more than one Saturday in August?

22 A Maybe more than one.

23 Q That is all that you can remember, maybe one?

24 A Maybe two, maybe three.

25 Q What time did you get to this building on that one



1 gab-13

D'Onofrio-cross

2 Saturday in August that you remember?

3 A One Saturday I specifically remember getting  
4 in at ten o'clock.

5 Q I want to know what time --

6 A I said one Saturday specifically ten o'clock.

7 Q Ten o'clock. Would you tell us what time you  
8 left on that one Saturday that you remember?

9 A About four o'clock.

10 Q From 10:00 to 4:00, it is about six hours, right?

11 A Less a lunch break.

12 Q And you were with Mr. Sorkin all the time?

13 A Generally, yes.

14 Q And with Mr. Doonan all the time?

15 A I don't believe Mr. Doonan was there.

16 Q Not present?

17 A No.

18 Q Anybody besides you and Sorkin?

19 A I really don't recall anyone besides myself and  
20 Mr. Sorkin.

21 Q Is it your answer, sir, that you don't recall who  
22 was there on a Saturday in August 19 --

23 A I said there wasn't anyone there --

24 Q You remember now that nobody except you and  
25 Sorkin were present?

1 gab-13a

D'Onofrio-cross

350a

2 A That is correct.

3 Q Right?

4 A That is correct.

5 Q And Mr. Sorkin spent the time going over your  
6 story, isn't that right?

7 A Discussing the case with me, yes, my end of the  
8 case.

5A

9

10

11

12

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25

1 gwrfl 5bam 1 D'Onofrio-cross

2 Q What he was going to ask you and you were going to  
3 tell him, isn't that what you were doing for six hours on  
4 that one Saturday in August?

5 A I think you could put it that way, yes, sir.

6 Q And Mr. Sorkin would put a question to you  
7 and you would give him an answer, you would tell him how  
8 you were going to answer it, right?

9 A No, I would tell him what my best recollection was.

10 Q I see.

11 He never made any suggestion as to how you should  
12 tell it?

13 A One or two times he asked me if I had heard some-  
14 thing, and I said, "I don't recall ever hearing that."

15 Q Now we have got that one Saturday in Augst. You  
16 say there three or four times?

17 A At least, yes, three or four at least.

18 Q When beside that one Saturday in August were  
19 you here, you know, to discuss your testimony?

20 A On this case?

21 Q Yes, just this case.

22 A Maybe two or three other week days.

23 Q Since August?

24 A No, prior to.

25 Q I see.

1 gwrf 2

D'Onofrio-cross

2 Do you remember what months you were there?

3 A They would be June, maybe one week in July. I  
4 don't know. I would have to look at my witness vouchers  
5 to verify it. I couldn't remember.

6 Q You have no recollection whether you were here  
7 in May?

8 A I probably was.

9 Q But --

10 A But I can't pinpoint the day.

11 Q You can't remember what day of the week it was?

12 A No.

13 Q Do you remember whether it was raining or it  
14 was not raining?

15 A Sometimes it rained and sometimes it didn't.

16 Q On the day that you were here in May or may  
17 have been here in May, was it raining?

18 A I have no recollection, sir.

19 Q None whatever?

20 A No, sir.

21 Q Whom did you meet with when you came in May?

22 A I don't recall.

23 Q What time did you get here when you came in May?

24 A I usually get in around 11:00 o'clock.

25 Q No, sir, I want to know on the day in May what

1 gwrf 3 D'Onofrio-cross

2 time you remember you came in?

3 A No recollection, sir.

4 Q None whatever?

5 A No, sir.

6 Q You don't know whether it was morning or afternoon,  
7 do you?

8 A I just said 11:00 o'clock. You want to pinpoint  
9 it on a particular day --

10 Q No, I want your best recollection.

11 A It was always, sir, in the mornings at about  
12 11:00 o'clock --

13 Q I see.

14 A -- because that is the time my train arrives.

15 Q That is the only reason you know it was 11:00  
16 o'clock, is that right?

17 A Well, it usually takes that much time to get  
18 in here.

19 Q You have no actual recollection of coming in at  
20 11:00 o'clock one day in May?

21 A No.

22 Q What time did you leave on that one day in May?

23 A I have no recollection, sir.

24 Q None whatever? You don't know whether it was  
25 morning or afternoon, correct?

1 gwrfr 4 D'Onofrio-cross

2 A That is correct, sir.

3 Q You don't know how many hours you spent?

4 A No, sir.

5 Q And that was in May 1974?

6 A That is correct, sir.

7 Q While you were here in May 1974, whom did you  
8 meet with?

9 A Well, I very rarely got to meet with either Mr.  
10 Sorkin or Mr. Doonan. They were generally very busy and I  
11 would be working -- I would be working on other cases with  
12 other U.S. Attorneys sometimes.

13 Q On that day in May that you were here, did you  
14 meet with Sorkin and Doonan or not?

15 A I have no recollection, Mr. Gould.

16 Q Do you remember what you were doing on that day  
17 in May 1974?

18 A No, sir.

19 Q You don't even know what cases you were talking  
20 about?

21 A No, sir.

22 Q You have told us here this morning that you have  
23 discussed your testimony three or four times, correct?

24 A No, three or four times on Saturdays I said, and  
25 I have discussed my testimony on a number of other

1 gwrf 5 D'Onofrio-cross

2 occasion prior to that, during weekdays.

3 Q When you said three or four times, you meant only  
4 three or four times on Saturdays?

5 A On Saturdays with Mr. Sorkin, yes, and then about  
6 three or four other times besides. I would hazard a  
7 guess -- you want the total number of times, sir?

8 Q Yes, sir. I want to know how many times you went  
9 over your testimony either with Mr. Sorkin or Mr. Doonan  
10 or anybody else connected with the Government.

11 A I'll guess at about eight times in total, but not  
12 completely. At no time did we ever go over it completely.

13 It is a quarter one time and then half another.

14 Q On the day when you were here for six hours, didn't  
15 you go over it completely?

16 A No, sir.

17 Q Just a part of it for six hours, right?

18 A That is correct. We tried, but we didn't manage  
19 to finish.

20 Q Just refresh my mind. You said how many times  
21 altogether that you discussed your testimony?

22 A On this particular case?

23 Q This case.

24 A About eight or nine times.

25 Q When was the first time that you discussed this

1 gwrf 6 D'Onofrio-cross

2 case, the first of those eight or nine times?

3 A Right after the indictment they informed me an  
4 indictment had been made and that they would be calling me  
5 in soon. I don't remember when the indictment was. I'm  
6 sorry.

7 Q You have no recollection?

8 A No, sir.

9 Q Do you remember appearing before the grand jury  
10 in this case?

11 A Oh, yes.

12 Q When was that? What month was that?

13 A I don't know whether it was in March -- somewhere  
14 around February, March. I don't remember. Then back in  
15 November. I appeared before the grand jury on so many cases  
16 on so many instances, it would be difficult to pluck out  
17 which one from where.

18 Q You don't remember when except by month, right?

19 A Even that I'm lucky.

20 Q Do you remember being asked this question and giving  
21 this answer before the grand jury on November 19, 1973,  
22 the interrogator being Mr. Sorkin --

23 MR. SORKIN: Page, Mr. Gould?

24 MR. GOULD: It says at the left-hand top, RSK 4.

25 MR. SORKIN: Thank you.



1 gwrf 7

D'Onofrio-cross

2 Q "Q Now, you and I, Mr. D'Onofrio, have met in  
3 my office on numerous occasions, is that correct?

4 "A Yes."

5 That was a correct answer, correct?

6 A That is correct.

7 Q And the next question:

8 "Q And we have discussed Training With The Pros among  
9 other things, is that correct?

10 "A That is correct."

11 A Yes.

12 Q Now, can you and I agree now that prior to November  
13 19, 1973, the date when those questions were put to you,  
14 you had met with Mr. Sorkin in his office numerous times  
15 and discussed Training With The Pros?

16 A And the other half is the more important part,  
17 amongs others. Training With The Pros was the lesser  
18 of those meetings.

19 Q But you did discuss Training With The Pros numerous  
20 times?

21 A Just as it says in the grand jury testimony.  
22 But as to leverage and volume, it was minutely discussed.

23 Q Back in May of 1973 didn't you meet in this  
24 buialding with people connected with the Government and  
25 talk about Training With The Pros?

1           qwrf 8                           D'Onofrio

2           A     Yes, I did.

3           Q     And with whom did you meet?

4           A     With Thomas Doonan.

5           Q     I see.

6                     How many times in May '73 did you go over this  
7 story about Training With The Pros?

8           A     No story at all, sir.

9           Q     Your testimony.

10          A     No testimony at all, sir. I just gave him a  
11 best recollection of that particular crime plus the best  
12 recollection of many, many other crimes of other people and  
13 myself.

14          Q     You agree you had a meeting here on May 22, 1973 --

15          A     I don't agree. If you tell me that and you have  
16 a document that says that I have, I will agree, but I  
17 cannot recall it.

18          Q     Don't you have any recollection of being here in  
19 May 1973?

20          A     We have already established that I do have a  
21 recollection, but no recollection as to what was discussed.

22          Q     How about the recollection as to who was present?

23          A     I told you Mr. Doonan I remember at one occasion,  
24 but I met with an awful lot of United States Attorneys.

25          Q     When you met in May '73, was anybody besides

1 gwrf 9

D'Onofrio-cross

2 Doonan present?

3 A On maybe one occasion or two maybe Mr. Sorkin,  
4 but he was predisposed with other cases at the time and  
5 was mostly vacant -- absent rather than present.

6 Q Don't you remember whether Mr. Sorkin was there or  
7 not?

8 A Could have been intermittently.

9 Q Could have been.

10 Do you remember what you said in May 1973 to  
11 Mr. Doonan?

12 A I do not recall.

13 Q No recollection at all?

14 Do you remember a time in May 1973 when you were  
15 here for more than one day consecutively?

16 A Oh, yes, sir.

17 Q How long were you here?

18 A I didn't hear your question.

19 Q How long? How many consecutive days were you here?

20 A There may have been many times I was here on  
21 consecutive days. I don't recall.

22 Q Mr. D'Onofrio, just in May '73 --

23 A I just don't recall.

24 Q You don't remember?

25 A No, sir.

1 gwrf 10

D'Onofrio-cross

2 Q How about May '74, do you remember being here on  
3 consecutive days?

4 A Possibly, yes, but I don't recall.

5 Q No recollection?

6 A No, sir.

7 Q July 1973, do you remember being in this building  
8 in connection with this case?

9 A With this case?

10 Q Yes, sir.

11 A In particular this case?

12 Q Not in particular, but mentioning this case.

13 A Happened to mention it? I could have been before  
14 a grand jury in July.

15 Q Don't you remember whether you were --

16 A I just said yes, I could have been before a  
17 grand jury and this case could have been mentioned amongst  
18 other cases.

19 Q Sir, do you have an actual recollection of  
20 appearing before the grand jury in July 1973?

21 A Not an actual recollection, no, sir, because I  
22 have appeared many times before the grand jury.

23 Q In July 1973 when you did appear before the  
24 grand jury in this building, sir, how many times had you  
25 already appeared in the United States Attorney's office?

1 gwrf 11 D'Onofrio-cross

2 A In July when I appeared before the grand jury,  
3 how many times prior had I been in the United States  
4 Attorney's office?

5 Q That is right.

6 A Are you distinguishing between the United States  
7 Attorney and their investigatory department, sir?

8 Q No, sir.

9 A No distinction?

10 Q No distinction.

11 A I have been in the investigatory department with  
12 Mr. Doonan on a number of occasions, four or five occasions,  
13 and possibly with the United States Attorneys maybe only  
14 once or twice for a brief half hour or three-quarters of  
15 an hour.

16 Q How about the Federal Bureau of Investigation,  
17 did you leave them out?

18 A Excuse me?

19 Q Did you visit with the Federal Bureau of  
20 Investigation?

21 A In what time, what year, sir?

22 Q Prior to July 1973.

23 A I had many visits with the Federal Bureau of  
24 Investigation during last summer.

25 Q In addition to your visits with Doona, right?

1 qwrf 12 D'Onofrio-cross

2 A That is correct, sir.

3 Q And in addition to any conversations you had with  
4 Mr. Sorkin or Mr. Brodsky or other people?

5 A That is correct, sir.

6 Q During this period in July did you have any other  
7 activity except in working with the Government?

8 MR. SORKIN: Objection to the term activity, your  
9 Honor. I don't know what he means. A job or cooperation  
10 or what?

11 THE COURT: Perhaps you could sharpen that up a  
12 bit. What do you mean by activity?

13 Q Were you engaged in any business except working --

14 A Yes, I was trying to perform my duties.

15 Q As what?

16 A For Galco Leasing System at the same time, but it  
17 is a royalty company. I was making efforts to get  
18 my passport back from the United States Government because  
19 my work would necessitate traveling to Japan, to Italy for  
20 licensee purposes and I failed in that effort and I was  
21 not able to go overseas for the Government -- for my  
22 company, and I did work with the company, but I tried to  
23 do it on weekends.

24 Q Galco?

25 A That is correct.

1 gwrfl 13

D'Onofrio-cross

2 THE COURT: How do you spell that?

3 THE WITNESS: G-a-l-c-o.

4 THE COURT: Galco?

5 THE WITNESS: Yes, sir, Leasing System.

6 Q Galco Leasing, that was your company, wasn't it?

7 A No, sir, I have stock in the company.

8 Q How much? What percentage?

9 A About eight per cent.

10 THE COURT: Is this the same company you told us  
11 about earlier when Mr. Gould asked you about this merger --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- that you told us about in '71?

14 THE WITNESS: That is correct, sir.

15 THE COURT: What is it you do for them now?

16 What kind of work?

17 THE WITNESS: Right now -- I'm in the process  
18 right now of negotiating foreign -- we license STP an  
19 exhaust emission device, which is the only device used in  
20 the State of California, for which we get royalties.

21 We are presently processing new devices for exhaust  
22 emission systems by the --

23 THE COURT: So you try to sell this?

24 THE WITNESS: I tried to sell it to other licensees  
25 other than STP which we already licensed two years ago.

1 gwrf 14

D'Onofrio-cross

2 THE COURT: Since I have already interrupted you  
3 to this extent, would you brook a further interruption  
4 for luncheon, Mr. Gould?

5 MR. GOULD: I would welcome it, your Honor.

6 THE COURT: All right. 2:15 o'clock, ladies  
7 and gentlemen.

8 (Luncheon recess.)  
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2 (In open court; jury absent.)

3 THE COURT: Mr. Sorkin, what is your problem?

4 MR. SORKIN: Your Honor, I don't have a problem,  
5 but I am bringing something to the Court's attention which  
6 is tourblesome to say the least. At the break, your Honor,  
7 after your Honor left the bench and after the jury left,  
8 Mr. Frank's wife, while Mr. D'Onofrio was still on the stand,  
9 made a statement to the effect that "Cancer can't be cured,  
10 but we can dissect you."

11 I am not putting any interpretation on that. I  
12 only ask that not be continued under any circumstances while  
13 the witness is on the stand either for the Government or the  
14 defense.

15 We think it is intimidating and it is not calle<sub>d</sub>  
16 for.

17 THE COURT: I grant you it is uncalled for, but  
18 what do you want this Court, by this Judge, to do about it?

19 MR. SORKIN: Your Honor, we merely ask this  
20 Court to direct that any spectators who wish to stay in this  
21 court conduct themselves as spectators and not make any  
22 statements to witnesses on the stand.

23 THE COURT: I am a little take aback. As you said,  
24 we had all gone, so I don't assume that the witness was  
25

1 gab-2

D'Onofrio-cross

2 on the stand.

3 MR. SORKIN: He was still on the stand, your Honor.  
4 Your Honor had left the bench and the jury had filed out.

5 Mr.D'Onofrio --

6 MR. GOULD: If I may make a suggestion, so we don't  
7 have to test out the peripheral powers of the Court in a  
8 weighty matter of this kind, I am sure Mr.Feldshuh can have  
9 a few words with Mrs.Frank to avoid repetitions of any such --

10 MR. FELDSHUH: I have already done so, your  
11 Honor. I can assure the Court it will not happen again.

12 THE COURT: Before we bring the jury back, at the  
13 recess I want to talk to Messrs.Feldshuh and Sorkin about  
14 this marvelous exchange of letters which strikes me as being  
15 another tempest in a teapot.

16 However, in fairness to both of you gentlemen,  
17 I think I better find out. Maybe it is more serious than  
18 the letters read.

19 I want you to have your opportunity. Most of  
20 that material to my knowledge, and believe me, my own  
21 knowledge is by no means as good as yours and Mr. Sorkin's, wa  
22 turned over long ago, either in response to an inquiry by  
23 counsel for Stoller or on behalf of your office.

24 Be that as it may, you may be heard and let's do  
25 it during the recess.

2 Bring in the jury.

3 (Jury present.)

4 R A M O N N. D ' O N O F R I O resumed.

5 CROSS-EXAMINATION (continued)

6 BY MR. GOULD:

7 MR. SORKIN: May the record reflect I am turning  
8 over to Mr. Gould right now Government Exhibits 81 through  
9 91, which are certain documents that Mr. D'Onofrio turned over  
10 to the Government, which I believe Mr. Gould asked for  
11 before we broke for lunch (handing).

12 We have not completed our search of all our files.  
13 This is what we did in a very quick look through our files.

14 THE WITNESS: Your Honor, may I speak to you for  
15 a minute?

16 THE COURT: Is it important that it be discussed  
17 now?

18 THE WITNESS: I think so, your Honor. You  
19 would have to evaluate that after you hear it from me.

20 THE COURT: Yes, Mr.D'Onofrio has requested to  
21 speak to me about some matter, the substance of which I  
22 don't know. I will now speak to him and inform you if  
23 need be.

24 (Pause.)

25 THE COURT: Gentlemen, I will advise you about

this at some suitable interval. We need not stop now in my judgment.

Q Mr. D'Onofrio, you told us yesterday that when you first went to work for Training With the Pros, you were working for a firm called A. T. Brod, correct?

A I never worked for Training with the Pros, Mr. Gould.

Q When you first undertook to handle their public distribution of their stock, you don't remember that?

A Yes, I do.

Q You were working for them?

A That was not the first time I was working for Souran Associates prior. So it is not the first time, Mr. Gould.

Q I thought you testified yesterday, sir, that when Mr. Moss approached you or you talked to Mr. Moss about a public offering for what was then M & H --

A Studios.

Q -- you were working for A.T. Brod at the time?

A That's correct.

Q That was your job?

A That is correct.

Q You were the director of underwritings for them?

A That is correct.

1 gab-5

D'Onofrio-cross

2 Q A.T. Brod was a company who was controlled or  
3 owned by Mr. Brod, Al Brod, isn't that right?

4 A The gentleman --

5 Q Right here. Stand up, Mr. Brod. That's the man  
6 that you were working for at the time?

7 A That is correct, sir.

8 Q And you told us yesterday that you asked Mr. Brod's  
9 permission --

10 MR. SORKIN: Is Mr. Brod going to be called as  
11 a witness for the defense? If so, I ask that he be excused  
12 at this time.

13 MR. GOULD: I was in the middle of a question.

14 MR. SORKIN: I am sorry, Mr. Gould.

15 MR. GOULD: I am sure that was a very weighty point.  
16 May I just finish the question, your Honor?

17 THE COURT: Finish the question.

18 MR. GOULD: Then we will deal with whether Mr.  
19 Brod is to be called. I wanted him to identify him.

20 Q Let me start over again. You told us that you  
21 asked Mr. Brod for permission to, I think you said, to moonlight  
22 something like that?

23 A No, firstly to take the underwriting.

24 Q First you asked him if you could handle the  
25 underwriting in A. T. Brod?

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D'Onofrio-cross

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A Yes. He said he would not.

Q He said he didn't want it?

A That's right.

Q Then you said to him in words or in substance,  
do I have your permission to do it on my own time or to  
moonlight, right?

A That's correct, yes, sir.

Q He said go ahead?

A Yes.

Q A.T.Brod was a member firm of the New York Stock  
Exchange, wasn't it?

A That is correct, sir.

Q You were an employee of that company, were --

A Not exactly, sir.

Q You were a director of underwriting?

A But I was not an employee. If I was an employee,  
I would have had to be registered, and Mr. Brod in order to  
escape the Exchange rules, drew up a contract with me making  
me a contract director of underwriting, sharing in 50 per cent  
of the profits of every thing I put in, and all expenses,  
phones and everything else were to be borne by myself.

So I was a contract partner in underwritings.

Q I see. You were not an employee?

A I wasn't an employee under the New York Stock

gab-7

D'Onofrio-cross

1 gab-7  
2 Exchange rules at his suggestion, because it would violate  
3 the New York Stock Exchange rules.

4 Q But you are sure that you asked for his permission?

5 A Absolutely, sir.

6 Q Thank you.

7 MR. GOULD: What is the question that I was  
8 supposed to deal with?

9 MR. SORKIN: I have noticed Mr. Brod here. I  
10 have no objection to him being here unless he is to be called  
11 as a witness. If that is the case, I ask that he be excused.

12 MR. GOULD: I have no intention, had no intention  
13 of calling him as a witness, your Honor. Something was  
14 brought to my attention, and I just wanted to make sure about  
15 it.

16 THE COURT: That is perfectly fine.

17 MR. GOULD: He is just a spectator. He is  
18 on his own.

19 THE COURT: At the moment at least there is no  
20 intention of calling him as a witness.

21 MR. GOULD: I have no intention of calling him.

22 MR. SORKIN: Thank you.

23 THE COURT: Let's go on to other matters.

24 MR. GOULD: Unless something develops.

25 THE COURT: Yes. I am not trying to lock you



1 gab-8

D'Onofrio-cross

2 or the Government in. I just wanted to ask your present  
3 intention, and you have told me. That's enough.

4 Q Now, Mr. D'Onofrio, you say you never worked with  
5 Training With the Pros?

6 A No. My firm was a consultant, sir. I think we  
received \$100 or \$200 a month.

8 Q How much?

9 A \$100 or \$200 a month. Maybe 300. I don't re-  
10 call.

11 Q What firm was that?

12 A This was then D'Onofrio, Feeney, Kirschbaum &  
13 Company.

14 Q This was D'Onofrio, Feeney --

15 A Kirschbaum & Company.

16 Q Kirschbaum?

17 A That's right.

18 Q That is a different firm from D'Onofrio?

19 A Same firm. When Mr. Feeney left as a partner, we  
20 condensed the name shorter.

21 Q Did you ever get as much as 2500 or \$3000?

22 A There may have been times on particular consulting  
23 fees that I may have gotten that, yes. It is possible.

24 Q You only consulted about the underwriting?

25 A I'm sorry, sir?



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D'Onofrio-cross

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Q You only consulted about the underwriting, the public offering?

A No, we consulted about a lot of other things.

Q I see. Let me get down to something here. You have testified here, I think in response to questions by Mr. Sorkin, about certain indictments and convictions against you.

I would just like to get it straightened out about something. As I understand it, sir, the first case in which you were indicted, in which you were named as a defendant in an indictment, was a case called United States against D'Onofrio and certain others in the Eastern District, in the Federal Court, in the Eastern District, over there in Brooklyn, in which Mr. Pfingst was your co-defendant, correct?

A Incorrect, sir. Also Mr. Feeney was a co-defendant.

Q Mr. --

A It is not complete.

Q Let's get it straight. You and Pfingst and Feeney were indicted in something called United States against D'Onofrio in the Eastern District?

A Yes, sir.

Q Correct?

A Yes, sir.

1 gab-10  
2 Q And that indictment came down in 1971, and without  
3 going into a lot of detail about it, it involved a bankruptcy  
4 fraud?

5 A That is correct, sir.

6 Q You pleaded guilty to that indictment?

7 A That is correct, sir.

8 Q And you testified against Mr. Pfingst for the  
9 Government?

10 A That is correct, sir.

11 Q YOU got a suspended sentence?

12 A Prior to the trial, sir.

13 Q But in the case? You got a suspended sentence?

14 A Prior to the trial.

15 Q And Mr. Pfingst got a jail sentence?

16 A He got a four-month jail sentence and I subsequently  
17 was given a four-month jail sentence.

18 Q You got a suspended sentence in that particular  
19 case, isn't that right?

20 A Modified to a four-month jail sentence.

21 Q Later on?

22 A I think you want the whole truth, do you not?

23 Q I will get it.

24 You answer my questions and I think you will  
25 help me if you don't volunteer, just respond.

2 In that case you testified against Pfingst  
3 who was your former partner, correct?

4 A Partner and lawyer, yes.

5 Q That is right. And Feeney, who was your former  
6 partner?

7 A That is correct, sir.

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D'Onofrio-cross

2 Q And then there was another case called United  
3 States against Pfingst, also in '71 -- I'm referring to  
4 an indictment which has the number 71 Cr. 1060 in which you  
5 were named as a co-conspirator, correct? Do you remember  
6 that one?

7 A No, sir.

8 Q You don't remember?

9 A Are you talking about the bribery indictment, sir?

10 Q Yes, sir.

11 A Then you are reading it incorrectly. It is  
12 Pfingst and Feldman and I was not named as a co-conspirator.

13 Q You were not?

14 Were you named in the bill of particulars in  
15 that case?

16 A I don't know about that.

17 Q You don't know?

18 A But you said I was named as a co-conspirator.

19 MR. GOULD: Will counsel concede that this witness  
20 was named as a co-conspirator in the bill of particulars  
21 filed in United States against Pfingst and Feldman, bribery  
22 case, 71 Criminal 1060?

23 MR. SORKIN: Your Honor, I have not seen the bill  
24 of particulars, but I will accept Mr. Gould's representation  
25 that if it is contained in the bill of particulars --

1 gwrf 2

D'Onofrio-cross

2 MR.GOULD: I do so represent.

3 MR. SORKIN: If he so represents, your Honor, I  
4 will concede it.

5 A May I answer you, Mr. Gould?

6 Q I haven't asked you anything.

7 A On that subject.

8 Q I haven't asked you anything.

9 A You haven't asked me a question?

10 Q No. Now I will.

11 In that case you again testified, did you not?

12 A I did, sir.

13 Q Again you testified for the Government?

14 A For the United States Government.

15 Q That is right. And you testified against Mr.

16 Pfingst and Mr. Feldman, right?

17 A Yes, sir.

18 Q Was Feldman a former partner of yours?

19 A No, sir.

20 Q Had nothing to do with him in the past?

21 A Casually.

22 Q All right.

23 That case -- we will pass that.

24 The next case in which you were indicted as far  
25 as I can make out is something called United States against

1 gwrf 3 D'Onofrio-cross

2 Hagopian and D'Onofrio and other people.

3 Do you remember that case, Mr. Witness?

4 A Yes, I do, sir.

5 Q There you were indicted -- you tell us. Do you  
6 remember what you were indicted for?

7 A It's a very complicated case.

8 Q In a nutshell.

9 A In a nutshell, carrying some money from Switzerland  
10 in the payment of some mutual fund managers that had  
11 manipulated stocks.

12 Q Would you agree with me that the substance of the  
13 charge was that you had conspired to bribe certain managers  
14 of mutual funds?

15 A That is just what I said, yes.

16 Q That is what it was?

17 A I was part of the conspiracy.

18 Q That is right. And there you pleaded guilty,  
19 correct?

20 A Last September, yes, sir.

21 Q These fellows in the case, Hagopian, was he a  
22 partner of yours in any deals?

23 A I don't know the man.

24 Q How about Gallanis?

25 A I knew him.

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D'Onofrio-cross

Q He was a friend of yours, wasn't he?

A A friend.

Q You had a lot of business with him?

A Not a lot, some business. He was not a partner.

Q And you testified against him in that case, didn't you?

A I have testified against no one in that case.

Q The answer is yes, you did testify against Gallanis?

A No, I did not.

MR. SORKIN: He said he did not, your Honor.

Q But you did testify in the case, didn't you?

A No, I did not.

Q All right.

Has the case come to trial yet, do you know?

A I think so, sir. You would have to tell me. I cannot tell you that. You have got it in front of you.

Q Let's just take those cases, those ones I have mentioned.

" The Pfingst case, Stoller had nothing to do with that, did he?

A No.

Q That was just you and Pfingst and other people, right?

A I didn't hear the last remark.

1 gwrf 5 D'Onofrio-cross  
2 Q Stoller had nothing to do with it?  
3 A That I heard.  
4 Q You, Pfingst and other people, somebody?  
5 A Yes.  
6 Q And Frank had nothing to do with that, that one?  
7 A No, sir.  
8 Q The bribery case, Stoller had nothing to do with  
9 that, the one in which you testified?  
10 A No, sir.  
11 Q This other one I have just mentioned, Hagopian,  
12 Yamada, you remember the fellow, Gallanis --  
13 A Would you please read all the names for me so  
14 I can recall?  
15 Q Sure.  
16 A I would like you to read all the names.  
17 Q Hagopian, Saunders, Don Frio, Gallanis and  
18 Tyson. You are the Don?  
19 A I'm the Don, yes, sir.  
20 Q That was the one where you say you bribed the  
21 investment advisors?  
22 A No, sir, I did not say that. I said I was in the  
23 conspiracy for the bribery.  
24 Q You pleaded guilty?  
25 A I did, sir.



1 gwrf 6

D'Onofrio-cross

2 Q Stoller had nothing to do with that one?

3 A Absolutely not.

4 Q Nor Frank?

5 A Absolutely not.

6 Q Sir, you are indicted in a case, I think in this  
7 district here, in this courthouse, called United States  
8 against Van Aiken and D'Onofrio, and that is 72  
9 Criminal 1221, and the substance of that indictment is  
10 conspiracy to commit securities fraud and bribery, correct?

11 A Yes, sir.

12 Q And you have pleaded guilty to that offense?

13 A That is correct, sir.

14 Q And you have not been sentenced?

15 A That is correct, sir.

16 Q You are awaiting sentence?

17 A Yes, sir, on that one and the former one you  
18 just mentioned.

19 Q We will come to it. Let me ask the questions.  
20 You are awaiting sentence on the Hagopian case,  
21 correct?

22 A That is correct, sir.

23 Q And you are awaiting sentence on the Van Aiken  
24 case, correct?

25 A That is correct, sir.

1 gwrf 7 D'Onofrio-cross

2 Q The Van Aiken case to which you have pleaded  
3 guilty, sir, and the gravamen of which is securities fraud  
4 and bribery, that involved some securities, did it not?

5 A Yes, it did, sir.

6 Q And it involved the use of Swiss bank accounts?

7 A It did, sir, yes.

8 Q But Stoller had nothing to do with that one?

9 A Absolutely not, sir.

10 Q Nor Frank had anything to do with that one?

11 A Absolutely not.

12 Q Now, sir, in 1973 you were again indicted in  
13 this courthouse on a charge of perjury.

14 Do you remember that?

15 A In 1973, sir? I think you have the wrong year.

16 Q 1973, the indictment to which I refer being 73  
17 Criminal 191.

18 A I think I was indicted for that in 1972, sir.

19 Q It may be, but usually the numbers on these indict-  
20 ments --

21 MR. GOULD: Will you concede to me, Mr. Sorkin,  
22 that he was indicted on March 17th --

23 MR. SORKIN: I will concede he was indicted in  
24 the early part of '73.

25 A Wasn't I indicted in '72 on that?

MR. SORKIN: Mr. Gould is asking the questions,

1 gwrf 8

D'Onofrio-cross

2 I'm not.

3 MR. GOULD: We might have missed a couple here  
4 and there.

5 THE COURT: Let's go back.

6 MR. SORKIN: We will concede that 73 Cr 191 was  
7 filed in the early part of '73.

8 THE COURT: You have said that. Let's go back to  
9 the main track here.

10 Q We have got the dates straight. We ar all in  
11 agreement it is '73 and indeed --

12 A I'm in disagreement. You are all in agreement.

13 Q Let me show you --

14 A I know I ran away from the United States on that  
15 perjury count in 1972. When they filed it, I don't know.

16 MR. SORKIN: Your Honor, if Mr. Gould will just  
17 give me his ear, I think --

18 MR. GOULD: You have my ear.

19 THE COURT: If it is of any great moment,  
20 gentlemen, I wish you would get to it.

21 Q Does it refresh your recollection, Mr. D'Onofrio,  
22 if I suggest to you that a complaint was filed against you  
23 in 1972?

24 A Without the benefit of a grand jury, that is  
25 correct. Now I remember it.

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2 Q Then you ran away?

3 A I'm not a lawyer. You will have to excuse me..

4 Q When you heard about that you ran away, right?

5 A When they arrested me on the complaint.

6 Q Then you got indicted for perjury?

7 A I'm sorry. Now I understand what the law is.

8 Q Let's just talk about this perjury case.

9 This perjury indictment charged that you had  
10 testified falsely under oath with respect to whether you had  
11 an account in the Bank Hofmann, remember?

12 A That is correct, sir, yes.

13 Q They asked you under oath -- you remember this,  
14 don't you --

15 A Mr. Sorkin asked me the question.

16 Q He did ask you the question? This was in the  
17 Securities and Exchange Commission.

18 A He was there then.

19 Q Really? He was then working for the Securities  
20 and --

21 A I lied to him.

22 MR.SORKIN: I will concede that I was there,  
23 your Honor, and I asked the questions when Mr. D'Onofrio  
24 perjured himself.

25 Q He asked you certain questions and among them he

1 gwr 10

D'Onofrio-cross

2 asked you whether you had any accounts with the Bank Hofmann  
3 and you said no?

4 A That is correct, sir.

5 Q And that was a lie?

6 A Your darn right.

7 Q It was perjury?

8 A Yes, sir.

9 Q Did you plead guilty to this indictment?

10 A I fought the case in England and I pleaded not  
11 guilty, I believe, when I returned and I believe the case was  
12 what we call nolle prosequi, something of that nature.  
13 I don't know the Latin.

14 Q The Government voluntarily gave it up?

15 A Well, they had four other indictments on me, that  
16 I had agreed only to three when I came in anyway.

17 MR. GOULD: Will counsel now concede that that  
18 indictment was the subject of a voluntary nolle prosequi  
19 by the United States Government?

20 MR. SORKIN: So conceded.

21 Q Therefore, you have never pleaded guilty to that  
22 perjury charge?

23 A That is correct.

24 Q Even though you know you did?

25 A I know I did.

1 qwrf 11 D'Onofrio-cross

2 Q And you have never been punished for it?

3 MR. SORKIN: Objection, your Honor, as to whether  
4 he's been punished. Even if he is indicted, that is not  
5 punishment. I object to that.

6 THE COURT: I don't think anybody suggested it  
7 was. I think the question is simply a question, have you  
8 ever been sentenced.

9 THE WITNESS: I have been two months in Her Majesty's  
10 prison in Pentonville as a result of it. I spent time in  
11 a Floridian jail. I spent a lot of time in jail on that  
12 count. I have never been given a sentence.

13 Q How much time have you spent in jail?

14 A I spent ~~55~~ days in solitary confinement in Her  
15 Majesty's prison.

16 Q Whose majesty? You mean the Queen?

17 A The Queen.

18 Q But not here?

19 A I spent 21 days in prison here for contempt of  
20 court.

21 Q Not in this case.

22 A You asked me --

23 MR. SORKIN: He's asking when he spent time in  
24 prison.

25 A Let me finish.

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D'Onofrio-cross

2 THE COURT: Just a moment.

3 MR. GOULD: I don't want him to finish at the  
4 moment, your Honor, because he has gone beyond the question  
5 that I put.

6 THE WITNESS: You said how much time have I  
7 spent in prison.

8 THE COURT: I understand you to ask, as he  
9 apparently did, how much time he spent in prison generally.

10 MR. GOULD: I didn't mean to. If I put it that  
11 way, I forgive.

12 THE COURT: I say that I understand it that way.  
13 I'm not condemning you, I'm just observing.

14 MR. GOULD: I will withdraw the question.  
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Q Now what I want to know is, on this perjury count that was the subject of the nolle prosequi, you didn't serve any time in an American prison, did you?

A I served time in Hillsboro County Jail, Tampa, Florida, when I was arrested by Federal marshal upon returning from Acapulco, Mexico, on what you call the complaint, rather, the indictment and I spent two days in the county prison as a Federal guest, but the Floridian prisons are not too kind and I don't think I spent any more time other than foreign prison time on that count.

Q So far on these five indictments which I have thus far enumerated, you have spent how much time in prison?

A Well, you are talking about all the indictments you just quoted?

Q Just the ones I asked you about.

A Including the Pfingst--

MR. SORKIN: I object. He said he wasn't sentenced on any of those indictments.

THE COURT: The witness is trying to get a clarification and let Mr. Gould and he work it out.

A I think I understand the question. I spent in the second indictment of Pfingst Feldman, in which I was a Government witness, 22 days in the Federal Detention Center on West Street for contempt of the Judge for refusing to



1 answer questions about foreign bank accounts, Phil Stoller,  
2 Jerry Allen, etc.

3 I spent 54, 55 days in Her Majesty's Prison, which  
4 I told you about before.

5 I spent two days as a result of the contempt charge  
6 prior to movement to the West Street jail in Nassau County  
7 Prison.

8 I spent two days in Hillsboro County jail, Tampa,  
9 Florida. But total time -- are you trying measure time,  
10 sir, or the amount of prisons I have been in?

11 Q No, the number of days. So far you spent about 90  
12 days.

13 A About three months.

14 Q About half of it over there in Pentonville,  
15 in England?

16 A In solitary. Pentonville is like Devil's Island.

17 Q Pretty bad place, isn't it?

18 A You darn right.

19 Q You were also indicted, were you not, in 1973,  
20 in this courthouse heree in a case called United States  
21 against Caplan and D'Onofrio, and there were certain other --  
22 do you want to hear every name?

23 A I would love to.

24 Q Caplan, Sain, Silverman, Fisher, persky, D'Onofrio  
25

1 rmb-3

D'Oncfrio-cross

2 and the U.S.Secretarial Institute, Ltd.

3 A Yes.

4 Q And you pleaded guilty to that?

5 A Yes.

6 Q The substance of that indictment was that you had  
7 engaged in a conspiracy to file false 10K reports with the  
8 Securities and Exchange Commission?

9 A Yes,sir.

10 Q And in that case did you testify against anybody?

11 A No, sir.

12 Q Were you asked to testify against anybody?

13 A I don't even know if the trial has been had or  
14 if it is over, sir. You would have to tell me.

15 Q You have not been sentenced?

16 A No, sir.

17 Q That is an open one, where you are awaiting sentence?

18 A One of the four open cases that I am awaiting  
19 sentence on.

20 Q Stoller had nothing to do with that one, did he?

21 A No.

22 Q Nor Mr.Frank?

23 A Well, he sort of represented me against Persky  
24 to help extradite myself from that situation and the firm  
25 of Feldshuh & Frank, Mr.Frank represented me and United

1  
2 State Secretarial Schools in helping me get out of the  
3 fraud I had committed for the \$375,000.

4 Q You were indicted and pleaded guilty, right?

5 A Yes, sir.

6 Q Then you were indicted again in 1973 in a case  
7 called United States against Strub, and I will give you the  
8 names, there, Strub, D'Onofrio, Van Aiken, Alfred Herbert  
9 and Peter B. Rosenthal, right?

10 A Yes, sir.

11 Q In that case do you remember what you were charged  
12 with there?

13 A Not only manipulating the stock, but also  
14 arranging to have a Mr. Strub, the foreign banker, pick up  
15 his payoff money in Zurich, Switzerland, at Bank Hofmann.

16 Q Strub was a vice-president of a New York Stock  
17 Exchange firm?

18 A I think he pleaded guilty. I don't know what  
19 he was.

20 Q Never knew him?

21 A I saw him once through a window, but I could  
22 not recollect if he was in this room again.

23 Q Anyway, that case, and if you don't agree with me  
24 you tell me, because I am trying to save everybody's time  
25 on it, charged you with conspiracy to violate the securities

1 rmb-5

D'Onofrio-cross

2 laws?

3 A That's right.

4 Q With fraud under the securities laws?

5 A That's right.

6 Q And bribery?

7 A That is the manipulation and the bribery, yes.

8 Q In that case one of your co-defendants was  
9 a fellow named Alfred Herbert?

10 A Yes, sir.

11 Q The same Alfred Herbert at the Bank Hofmann you  
12 have been telling us about here?

13 A That's correct.

14 Q Stoller had nothing to do with that one, did he?

15 A Let's refer back to what case that is, sir?

16 Q Strub, United States against Strub --

17 MR. SORKIN: Perhaps if Mr. Gould mentions the  
18 stock, your Honor.

19 THE WITNESS: The stock might help me. I think  
20 it was Bio derivatives, but how much can you think when you  
21 have so many indictments? If you tell me --

22 Q This was an indictment which charged you with  
23 doing things right in 1970.

24 A Yes, sir. All I asked for was the name of the  
25 stock.

1

Q I am trying to get your recollection --

2

A I think it was Bio Derivatives.

3

Q You are not sure?

4

A I am pretty sure, but I don't have these documents,  
sir.

5

Q What did you say the name was?

7

A Bio Derivatives, and then you asked me did Stoller  
have anything to do with it and I wanted to be sure before  
I answer.

10

Q If that was the stock --

11

A If that was the stock, Stoller had nothing to do  
with it.

13

Q Have you read this indictment?

14

A Yes, sir.

15

Q What is your best recollection of the stock?

16

A I thought Bio Derivatives, but I could be wrong.

17

Q Did you ever hear of a stock called Health Evalua-  
tion Systems?

19

A Yes, sir.

20

Q Is that the stock that was involved in this?

21

A I don't know. I am not looking at it.

22

Q Don't you remember --

23

MR. SORKIN: He said he doesn't know, your Honor.

24

He said it three or four times, he doesn't remember.

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THE COURT: I agree. Let's go on.

Q If it was Health Evaluations --

A He had nothing to do with it.

Q You and Herbert had something to do with it?

A Absolutely, sir.

Q I observe from that indictment, sir, to which you pleaded guilty, that there was a firm called Herbert & D'Onofrio in Zurich, Switzerland, sir.

A A.G.

Q Are you the D'Onofrio that was a member of that firm?

A Yes.

Q And the Herbert who was a member of the firm, is that the same Herbert you have been telling us about, at the Bank Hofmann?

A Yes.

Q Stoller wasn't a member of that firm, was he?

A No, sir.

Q Had nothing to do with it?

A With the firm? No, sir.

Q I also observe, sir, from this indictment against you, that there was a firm in Switzerland called D'Onofrio-Feeney, A.G. Are you the D'Onofrio --

A It is the same firm. It is a change of name.